

July 20, 2022

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SHERROD, TEED, VANDERHAGEN and WARE,

Plaintiffs,

-v-

Case No. 17-10164

VNA and LAN,

Defendants.

/

JURY TRIAL

BEFORE THE HONORABLE JUDITH E. LEVY  
UNITED STATES DISTRICT JUDGE

JULY 20, 2022

APPEARANCES:

For the  
Plaintiffs:

Corey M. Stern  
Levy Konigsberg, LLP  
605 Third Avenue, 33rd Floor  
New York, New York 10158

Moshe Maimon  
Levy Konigsberg, LLP  
605 Third Avenue, 33rd Floor  
New York, New York 10158

Melanie Daly  
Levy Konigsberg, LLP  
605 Third Avenue, 33rd Floor  
New York, New York 10158

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TRANSCRIPT:

**JESECA C. EDDINGTON, RDR, RMR, CRR, FCRR**  
**FEDERAL OFFICIAL COURT REPORTER**  
**UNITED STATES DISTRICT COURT**  
**200 EAST LIBERTY STREET**  
**ANN ARBOR, MICHIGAN 48104**

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1 For the VNA  
2 Defendants:

Daniel Stein  
Mayer Brown LLP  
1221 Avenue of the Americas  
New York, New York 10020

3

4

Mark R. Ter Molen  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, Illinois 60606

5

6

Cheryl A. Bush  
Bush, Seyferth PLLC  
100 West Big Beaver Road, Suite 400  
Troy, Michigan 48084

7

8

9 For the LAN  
10 Defendants:

Wayne Brian Mason  
Faegre Drinker Biddle & Reath LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201

11

12

David C. Kent  
Faegre Drinker Biddle & Reath LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201

13

14

Travis S. Gamble  
Faegre Drinker Biddle & Reath LLP  
1717 Main Street, Suite 5400  
Dallas, Texas 75201

15

16

Philip A. Erickson  
Plunkett & Cooney  
325 East Grand River Avenue, Suite 250  
East Lansing, Michigan 48823

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(None)

EXHIBITSMarkedAdmitted

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P R O C E E D I N G S

THE CLERK: Calling Sherrod, Teed, Vanderhagen, and Ware vs VNA and LAN.

THE COURT: Good morning.

MR. STERN: Good morning, Your Honor.

Corey Stern and Moshe Maimon for the plaintiffs.

THE COURT: Okay. Thank you.

MR. STEIN: And good morning, Your Honor.

Daniel Stein and Mark Ter Molen for VNA.

THE COURT: Thank you, very much.

MR. MASON: And Wayne Mason and David Kent for LAN.

THE COURT: Okay. Please be seated.

And all of our jury members are here despite the art fair, which got me going in circles, because even though I had reviewed with myself that there was an art fair coming yesterday, I was not ready for it this morning.

So I understand Mr. Mason wants to look at plaintiffs' PowerPoint slides.

Is that what it is?

MR. MASON: Yes. Consistent with what -- I'm sorry.

THE COURT: Well, let's let Mason talk and tell us what it is he wants.

MR. MASON: It's just consistent with what we did in opening. Trying to minimize objections. I prefer not to make objections during their closing and interrupt them. And so

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1     what we did in the opening was just briefly showed to make  
2     sure if there were any glaring objections, that we could make  
3     them before, deal with it, and move smoothly through the  
4     closings.

5             I asked the plaintiffs like we had done before, and  
6     they refused.

7             THE COURT: Okay. Thank you. Mr. Maimon or -- let's  
8     just -- I'd like to hear from either Mr. Maimon --

9             MR. MAIMON: We object to showing the defendants our  
10    closing argument. And opening is not an argument. It's what  
11    you expect to show. The Court overruled our request to go  
12    last. We're going first. It's unfair in our view, since  
13    Mr. Mason's not going to give his closing until tomorrow, that  
14    he has this much knowing what our argument is.

15            If he has an objection that needs to be made at the  
16    time, he can make it at the time. If it's proper to make it  
17    after the closing, that a curative instruction, we don't think  
18    that there's anything that we're arguing that's not -- we  
19    didn't put anything that's not in evidence. We just object to  
20    this request.

21            Closings are fundamentally different than opening  
22    statements.

23            THE COURT: Here's what we'll do, Mr. Mason. You'll  
24    exchange them simultaneously now. We'll then take a 30-minute  
25    break for everybody to -- Stein gives Maimon his. You give

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1 Maimon yours. We'll take a 30-minute break. We'll read them.  
2 We'll ask the jury to relax.

3 Is that what you're asking for?

4 MR. MASON: No, Your Honor. And I can't do that,  
5 because I'm going tomorrow, and I don't have them to exchange  
6 today. So --

7 THE COURT: Bobby Campbell has them.

8 MR. MASON: No, he does not have them. I'm still  
9 working on them, because I don't go until tomorrow. So the  
10 way it's been is just before each of the parties go up, we  
11 take a look at it. And I'll be prepared in the morning to  
12 show them before I stand up in the morning. But not today.

13 MR. MAIMON: That's the fundamental fairness.

14 THE COURT: All right. Stop.

15 We'll get started now without the exchange of slides.  
16 So anything else before we get the jury?

17 MR. STERN: Go ahead, Dan.

18 MR. STEIN: Just briefly sort of following on  
19 Mr. Mason's point about not interrupting with objections. I  
20 think, again, practice differs in different courts.

21 Our view would be that any objections would be  
22 preserved until after the other side finishes so that you can  
23 then ask for a curative instruction. But we wouldn't want to  
24 waive something by not objecting right away.

25 THE COURT: I don't know about that. I mean, that's

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1 your practice where you're from.

2 MR. STEIN: Yes.

3 THE COURT: If you think there's about to be some  
4 reversible error, something said to this jury, I think you'll  
5 need to object. And we'll take a sidebar in the back and work  
6 on it.

7 MR. STEIN: Okay. Thank you.

8 THE COURT: Because I -- if it's something minor that  
9 you don't see that won't be a part of your appeal if there is  
10 a plaintiffs' verdict, then let it go until afterwards, and  
11 you can discuss it at length.

12 But if it's something you think you need to object  
13 to, I recommend doing it in realtime.

14 Okay. Anything else?

15 MR. STERN: Yes, Your Honor. In preparing for the  
16 closing, we made the determination as a team that I was going  
17 to do the first closing and originally Mr. Maimon was going to  
18 do the rebuttal.

19 THE COURT: I remember that.

20 MR. STERN: Understanding the Court's decision or  
21 advice on that, it's become beneficial for us to have me do  
22 the main part of the closing. And Mr. Maimon is going to do  
23 the damages portion of our closing today.

24 THE COURT: Okay.

25 MR. STERN: And it would be very beneficial, I think,

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1 between when I'm finished to when he starts for that to be our  
2 first break. I would expect that I'm going to be -- I'm  
3 hoping a little less than two hours with my portion. So if we  
4 could just -- if we could just be mindful of breaks --

5 THE COURT: Yes.

6 MR. STERN: -- I think it would be beneficial for us  
7 to do it that way.

8 THE COURT: That sounds good to me. But I'm going to  
9 look at -- okay -- the person in charge.

10 MR. STERN: Thank you.

11 THE COURT: That sounds like it will work. All  
12 right. So anything else?

13 Okay. Great. Then let's get the jury in here.

14 MR. STERN: One more thing.

15 THE COURT: Yes.

16 MR. STERN: There's an issue, I think, with  
17 Question 6 on the verdict form that we still don't have it.

18 THE COURT: Oh.

19 MR. STERN: And so part of --

20 THE COURT: I'm sorry.

21 MR. STERN: Don't be sorry. Well, I mean, whatever.  
22 I didn't mean to insinuate anyone did anything wrong.

23 But I think it would be beneficial for us if we had  
24 that, because part of the closing involves vicarious  
25 liability. And I think there's a -- that verdict question is



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1 important.

2 THE COURT: Okay. I have it, a draft in my inbox  
3 right now.

4 (Pause In Proceedings)

5 THE COURT: I'm going to send you an electronic copy.  
6 With respect to vicarious liability, we adopted the argument  
7 that Mr. Kent -- or I accepted Mr. Kent's argument. And he  
8 had put in the chat the language that he thought was  
9 appropriate, and we adopted it.

10 MR. MAIMON: Yeah. I just thought that -- I saw a  
11 draft with some red lining in it. We just wanted the final  
12 version.

13 THE COURT: Oh, yes. We're sending it to you now.

14 MR. MAIMON: That's great. Thank you.

15 THE COURT: And there's still a small red line in  
16 this, because there was some concern about "as to." So we  
17 still have to work that out, but I want you to have the last  
18 best draft. But that won't have an impact on your argument, I  
19 assume.

20 And, Mr. Stein, I trust that there were negative  
21 COVID tests on your team in light of a positive yesterday by  
22 an individual who stayed in court after having symptoms.

23 MR. STEIN: Yes, that's correct. Personally I tested  
24 both rapid antigen last night and this morning and also got a  
25 PCR test to confirm.

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1 THE COURT: Good. Okay. I really appreciate that.  
2 We all need -- I care about you. I care about Mr. Campbell.  
3 But we all need to be safe and healthy.

4 Okay. Anything else? Okay. Great. Good.

5 Then, Leslie, if you'll let Bill know, we'll get  
6 started.

7 MR. STERN: I still think we don't --

8 THE COURT: What do we need?

9 Welcome, Jenia. My intern is back. We didn't scare  
10 her away yesterday. Right now she says I might want to be a  
11 podiatrist.

12 THE CLERK: Please rise for the jury.

13 THE COURT: Good morning. Good morning. Good  
14 morning.

15 (Jury In)

16 THE COURT: Welcome back to the jury.

17 Please be seated.

18 And I hope you found your way through the beginning  
19 of the art fair today. I got a little startled by it and had  
20 to take a few laps in my car before arriving here. So okay.

21 So for members of the jury, as I mentioned yesterday,  
22 you've now heard me read the jury instructions. I told you  
23 yesterday and I'll remind you again, I'll give you each a  
24 copy. So there won't be any need to have memorized that.

25 But I wanted you to have in mind what the law is that

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1 applies as you listen to the closing arguments. And that also  
2 gives the lawyers permission to refer. They can put them on  
3 the screen. They can quote them. And they know for sure this  
4 is it. These are the jury instructions.

5 So what will happen now is just like with opening  
6 statements, we start with the plaintiff. They have the burden  
7 of proof by a preponderance of the evidence. We will then  
8 move to VNA and to LAN for their closing arguments. And  
9 you'll notice a difference.

10 Opening statement is where a lawyer tells you what  
11 they think the evidence is going to show. Closing argument,  
12 on the other hand, is an opportunity for the lawyer to  
13 literally argue their case to you. No, they won't be like,  
14 "Nah-nah-nah-nah," like that.

15 But they'll be allowed to advocate for their client  
16 in what they think the evidence that we saw from the witness  
17 box and from the exhibits that were displayed and received  
18 into evidence. They'll have an opportunity to tell you what  
19 they think that means and what they hope you will find as a  
20 result.

21 So because our trial has been, I believe, 23 weeks  
22 long, we're in our 23rd week, we're -- I have permitted the  
23 lawyers to take more time than -- average closing might be 45  
24 minutes, an hour. They'll have a couple of hours to talk to  
25 you.

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1           So I just want you to be ready for that. But we will  
2           take a break. So don't worry. And what I want you to do is  
3           Mr. Stern will be going first, just like at the beginning.  
4           And Mr. Maimon will be also delivering part of the opening --  
5           or closing argument today. The opening closing.

6           And we'll take a break in between them. But if you  
7           need a break before then, if it's just you need a restroom  
8           break or you just need a stretch break, just say so. Okay.  
9           Promise me. I'll do the same.

10           Then after VNA gives their argument, LAN will  
11           probably be tomorrow. Then plaintiffs get a chance at what we  
12           call rebuttal, a chance to say, "Wait a minute. Take a look  
13           at this." That sort of thing. Okay?

14           Any questions from our jurors about the process?

15           Okay. Good. All right. Mr. Stern.

16           CLOSING ARGUMENT FOR PLAINTIFFS

17           MR. STERN: Thank you, Your Honor.

18           Good morning.

19           Before I get started, more than anything I really  
20           just want to thank you. It's kind of hard and weird to stand  
21           in front of eight people that you've seen every day for five  
22           months who you've not really gotten to know but who've heard  
23           you talk and take witnesses and fumble over their words at  
24           times and sometimes get emotional and try to advocate.

25           And that's true for all of us. But it's nothing

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1 compared to the time you've taken away from your families.  
2 And I don't say it gratuitously. I don't mean it like  
3 pandering. I just -- I appreciate it.

4 And I know what a sacrifice it's been for all of you.  
5 And genuinely appreciate it. I also get very emotional, and  
6 I'm going to try my best not to. And I'm going to make  
7 mistakes. I'm -- there's a lot of evidence. We've been here  
8 for five months.

9 And I want you to know that I'm doing the best I can  
10 up here. And I want you to bear with me. I'm going to go  
11 slow. I'm going to be thorough. And I'm going to do the best  
12 I can.

13 The true story of the Flint Water Crisis is the one  
14 that happened before anyone went into crisis management mode.  
15 Before anyone realized that they may have failed the people of  
16 Flint. The true story of the Flint Water Crisis is not one of  
17 excuses.

18 The true story of the Flint Water Crisis is what  
19 happened to a community when no one was watching. The true  
20 story of the Flint Water Crisis is the one that when the folks  
21 in charge finally realized that they had no clue of what to do  
22 or how to do it or what might happen if they did or didn't do  
23 what needed to be done. They called Warren Green. They  
24 called Jeff Hansen. They called LAN. They called David  
25 Gadis. They called Rob Nicholas. They called Marvin Gnagy.

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1 They called William Fahey. They called VNA. They called the  
2 experts.

3 Throughout this trial, you've learned from so many  
4 people so many times in so many ways how the folks in charge  
5 of Flint's water had no idea what they were doing. They had  
6 no experience doing what they were doing. They had no concept  
7 of the consequences of what they were doing.

8 They had no foresight about what might happen because  
9 of what they were or were not doing.

10 And Aundrea Teed, Riley Vanderhagen, Emir Sherrod,  
11 and Daylaana Ware were drinking and otherwise using water in  
12 all the ways. And that water was toxic.

13 In all of our communities through every season  
14 through all of time, our children are our most precious  
15 commodities. They come with innocence. They come with  
16 kindness. They come with hope. And the most common thread,  
17 perhaps the only real thread that binds all of us, regardless  
18 of race, religion, politics, regardless of our own adult  
19 insecurities, our own failures is our love for children. Kids  
20 are our responsibility.

21 In this world and life, true stories are the ones  
22 that happen before crisis management. Before damage control.  
23 Before it hits the fan. Before the spin. Before the lawyers.  
24 Before courthouses. And before trials.

25 You were told two stories over five months. Story 1,

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1 the true story, is what happened before damage control, before  
2 these companies went into crisis management. Story 1 is what  
3 really happened, what people really knew, what people really  
4 didn't know. What people really did. And what people really  
5 said. And what people really didn't do and really didn't say.

6 Story 1 is the true story about the real differences  
7 between the Flint River and the water from Lake Huron.

8 Story 1 is the true story about real corrosion control, about  
9 what was really necessary for people's safety. About the  
10 various roles that many people really played in the decision  
11 to switch from the DWSD to the KWA.

12 Their real roles in the switch itself and ultimately  
13 the real problems that befell the people of Flint. The real  
14 problems that caused real damage to these four children.

15 The second story is one that was developed by VNA and  
16 LAN after it hit the fan. Story 2, the fictional story, is a  
17 product of damage control, of crisis management.

18 Story 2, the damage control story is what happens  
19 when business development turns to crisis management. When BD  
20 turns into CYA. Story 2, the crisis management story requires  
21 you to believe in the magic of pixie dust.

22 Story 2 requires you to remember certain damage  
23 control things while simultaneously forgetting Story 1 things,  
24 true things. Big picture. Story 2 requires you to believe  
25 that while softening, which throughout time and throughout

1 Story 1, the true story was an optional, secondary, and as  
2 sworn to by everyone not testifying for LAN during this trial,  
3 an unregulated water treatment and not considered control.

4 But suddenly in 2015 when LAN feared it might get  
5 sued, softening became corrosion control. Not because it was  
6 but because it had to be when LAN went into damage control.

7 Story 2 requires you to believe that even though LAN  
8 knew Flint could not add orthophosphates to the water because  
9 there was no orthophosphate feed system, and even though LAN  
10 knew that the city was not going to be using real corrosion  
11 control, and even though LAN knew that the plant was ill  
12 equipped for the switch, and even though LAN knew that the  
13 plant didn't have enough personnel and that the personnel they  
14 did have wasn't trained, that LAN had no duty whatsoever to  
15 warn the City of Flint and the people that would be drinking  
16 that water, including our four clients, that they might get  
17 poisoned.

18 If you believe that, then perhaps LAN did nothing  
19 wrong.

20 Big picture. Story 2 requires you to believe that  
21 the words in a report do not mean what they say but rather  
22 what someone else says they say or says they mean seven or  
23 eight years later.

24 Story 2 requires you to believe that when Marvin  
25 Gnagy told you twice during this trial, first by video from



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1 his deposition in 2019 and the second time when he stood on  
2 that stand that the word "phosphate" in Veolia's final report  
3 meant polyphosphate and not orthophosphate, that he just  
4 didn't mean it.

5 When he took the stand and told you that twice,  
6 Story 2 requires you to believe that he testified wrong, that  
7 he did not mean it. Story 2 equally requires you to believe  
8 that both times Marvin Gnagy testified before you during this  
9 trial that the words "corrosion control" in the report meant  
10 red and dirty water, that he didn't mean that either. That he  
11 testified wrong.

12 Story 2 requires you to believe that both times he  
13 testified he meant something other than what he said. Not  
14 because it's true. It's because it's what has to be true in  
15 order for VNA to not be responsible for what happened to these  
16 four kids. That is Story 2.

17 Story 2 requires you to believe that the words in  
18 VNA's own report do not mean what the man who put them there  
19 says they mean. Their guy. And if you believe that, then  
20 perhaps VNA has no responsibility for what happened to those  
21 four kids.

22 Big picture. Story 2 requires you to believe that  
23 when Depin Chen told all of his colleagues at VNA before they  
24 even took the job that reconnecting to the DWSD for the next  
25 two years will be the best solution, that he didn't mean it.

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1 He was thinking out loud. He was spiffballing, because it  
2 wasn't in VNA's scope of work, and because they were never  
3 going back to the DWSD.

4 Story 2 requires you to believe that when Rob  
5 Nicholas said before VNA ever even took the job that the  
6 simple solution is to just buy Detroit water and that solves  
7 the problem, that he equally didn't mean it. And he shouldn't  
8 have said it. He was just spiffballing thinking out loud.  
9 But it didn't matter, because it wasn't in VNA's scope, and  
10 they were never going back to Detroit.

11 Story 2 requires you to believe that when Joseph  
12 Nasuta, an engineer for VNA, said during VNA's period in Flint  
13 that the quickest option and maybe the safest option is to  
14 return to Detroit internally, that he didn't mean it. He  
15 shouldn't have said it. He was spiffballing. And it didn't  
16 matter. Because it wasn't in VNA's scope, and they were never  
17 going back to Detroit.

18 Story 2 requires you to believe that when William  
19 Fahey in 2016 reminded everybody a year after VNA left Flint,  
20 "Now, you know why I was so adamant about taking the position  
21 that the best alternative was to go back to Detroit water,"  
22 that he didn't mean it in 2016 when he was reminiscing about  
23 it or reminding everyone.

24 And he certainly didn't mean it in 2015 when he said  
25 it for the first time, because he was just thinking out loud

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1 twice. He was just spiffballing twice. Because it wouldn't  
2 have mattered, because no one was ever going back to DWSD.

3 Even William Fahey had the sense enough to insist  
4 that business development tell Flint that going back to  
5 Detroit was an option and a safe option in realtime. And then  
6 because he's William Fahey, had to remind everybody of what he  
7 said a year later. He just had no idea that any of us were  
8 going to see his emails.

9 Because remember, he's a pick-up-the-phone kind of  
10 guy.

11 Story 2 requires you to believe that all of the  
12 internal emails from VNA that we've shown you during this  
13 trial should be ignored. Because Flint was never going back  
14 to DWSD. And that it wouldn't have mattered one bit what VNA  
15 said in its reports about going back to DWSD, because it just  
16 wasn't going to happen for Flint. Even though seven months  
17 after VNA left, it did.

18 VNA wants you to believe that there just was no path  
19 back to the DWSD. But when Governor Snyder and Mayor Walling  
20 learned in September or October of 2015 that there really was  
21 a problem with lead in the water, information that VNA had  
22 seven months earlier , they moved heaven and earth to get  
23 Flint back on the Detroit water source.

24 But Story 2 requires you to believe that there's no  
25 way they would have -- would not have done the same thing in

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1 March of 2015 had Snyder and Walling and others had credible  
2 information. And if you believe that, then perhaps VNA did  
3 nothing wrong.

4 Big picture. Story 2 requires you to believe that  
5 safe does not mean safe. That lead seems to be a problem does  
6 not actually mean that lead is a problem.

7 Story 2 requires you to believe that even though  
8 Marvin Gnagy, who sat up on that stand, the second time he  
9 testified before you and apparently realized in realtime for  
10 the first time right before your eyes that he made a mistake,  
11 that it was someone else's fault.

12 My partner, Mr. Maimon, asked him:

13 "Okay. And so when you told everybody and when you  
14 took the lead and copper out of the final report, based on the  
15 University of Michigan Flint data, you did that based on  
16 incomplete data, because you never followed up and said, 'Give  
17 me the rest of the data,' true?"

18 Answer, right there on the stand, "At this time, it  
19 appears to be, yes. I made a mistake."

20 Calculations that not only allowed VNA to take lead  
21 out of its final report but caused them to stand up on  
22 February 18 over and over and over and over and over again in  
23 a public meeting affirming for the world and the people of  
24 Flint that their water was safe.

25 They had lead in a draft report, and it came out. It

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1 came out either because of Marvin Gnagy's miscalculations or  
2 because someone from business development decided that it  
3 wasn't beneficial for it to be in. But despite all the  
4 internal emails. Despite everything you've seen. Despite all  
5 of the information about everyone from VNA who was urging or  
6 arguing or insisting or at least recommending that we tell BD  
7 go back to DWSD is an option for Flint. Lead seems to be a  
8 problem.

9 The word "lead" never made it into the report. But  
10 we know at some point it was in a draft.

11 Story 1 is built on truth. It's built on humility.  
12 It's built on regret and responsibility and self-reflection.  
13 An ownership of one's own limitations. Of one's own mistakes,  
14 big and small.

15 Story 2 is built on PR and spin. It's built on  
16 what's in the best interest of two companies bracing for  
17 litigation and getting ready to put experts on the stand for  
18 trial. Story 2 is a tale weaved so ridiculously, so  
19 incredulously that it's insulting that anyone would believe  
20 that any of us would actually believe it.

21 Story 1 is a story about a city in financial  
22 distress. Mayor Walling, one of our first witnesses who was  
23 on the stand for quite some time, came and testified about the  
24 history of Flint. You heard about the financial struggles  
25 that Flint suffered from decade to decade to decade.

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1           You heard about the booming economies of the 1970s  
2           and the 1980s when General Motors and the auto unions were  
3           running Flint. You heard about the way in which foreign  
4           manufacturing and multiple recessions caused the auto industry  
5           to leave making the population in Flint much, much smaller and  
6           making the economy much more precarious.

7           You heard about a city government in shambles. You  
8           heard about a city council that was dysfunctional. You heard  
9           about the need for an ultimate appointment of emergency  
10          managers, financial experts whose sole job was to take the  
11          city from the red to the black.

12          It feels like forever ago, probably more for you than  
13          for me. But when I first stood up here on February 28, I  
14          showed you the same slide. I stood here and told you that  
15          there was plenty of blame to go around. I told you that the  
16          Flint Water Crisis did not occur in a vacuum. I told you  
17          there was more than one piece to this puzzle. I was honest  
18          with you then, and I'm honest with you now. That's true and  
19          that's Story number 1.

20          You got a big packet yesterday. When I start talking  
21          about jury instructions, we put these in here, so I don't  
22          start crying. That's the philosophy of our team. So if you  
23          see them, it means I'm getting too emotional. It's a secret  
24          button on my clicker.

25          In your packet of jury instructions, you're going to

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1 read about preponderance of the evidence. And what it says  
2 is, "Establish by a preponderance of the evidence means to  
3 prove that something is more likely so than not. In other  
4 words, a preponderance of the evidence means such evidence as  
5 when considered and compared with evidence opposed to it, has  
6 more convincing force and produces in your minds belief that  
7 what is sought to be proved is more likely true than not."

8 I showed you the scales of justice five months ago,  
9 and you've heard various references to it both in openings and  
10 throughout the trial. And what that charge means that I just  
11 read to you is that there's a scale. And plaintiffs' job, our  
12 burden is to put as much evidence on this side of the scale as  
13 we can.

14 And the defendants have no obligation to put on any  
15 evidence to defend themselves, but they have. And they've  
16 also put on some evidence about other folks who they believe  
17 were responsible for the Flint Water Crisis or at least bear  
18 some responsibility.

19 And ultimately when you put the evidence on one side,  
20 our side, versus the evidence on their side, our job, the  
21 preponderance of the evidence means we have to tip it in our  
22 favor. We don't have to tip it so that everything on theirs  
23 flies off. We just have to tip it in our favor.

24 And we've all watched TV shows, and we know about  
25 reasonable doubt. "Law & Order." This is not a criminal

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1 trial. It's just not. And so the burden in a criminal trial  
2 that most of us are probably more familiar with, at least  
3 those of us who watch TV, it's a much higher burden. It's a  
4 much different standard.

5 Nonetheless, we have met our burden in spades.

6 And when the judge instructed you on nonparties, when  
7 she talked to you about Ambrose and Earley and Kurtz and  
8 Walling and Snyder and the MDHHS and the State of Michigan,  
9 she told you that it's their job to prove liability when it  
10 comes to all of those folks and all of those entities.

11 That is their burden. They had to come forward with  
12 real evidence. And on the whole, they have not. And frankly,  
13 when it comes to the other puzzle pieces, the other folks that  
14 they blame for this crisis, it will be fascinating and  
15 interesting to hear those proofs when they come up here to  
16 argue before you.

17 But despite real evidence, VNA and LAN want you to  
18 give them a pass. I'm not sure you even know who this person  
19 is. This is Ed Kurtz, the first emergency financial manager.  
20 VNA wants you to give them a pass, and they want you to blame  
21 Ed Kurtz for what happened to Riley and Aundreya and Emir and  
22 Daylaana. They want you to blame Ed Kurtz with no evidence.

23 We've learned only a little bit about Ed Kurtz. We  
24 know he was the emergency manager that made the decision to  
25 switch from the DWSD to the KWA.



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1           There's been no evidence about what Ed Kurtz knew or  
2           didn't know about corrosion control. There's been no evidence  
3           that Ed Kurtz even knew that the water ever was not safe.  
4           There's been no evidence about what motivated Ed Kurtz other  
5           than the fact that he was the emergency financial manager  
6           whose job it was, was to make sure that Flint went from the  
7           red to the black.

8           And if Ed Kurtz is even partially or a tiny bit or a  
9           huge amount responsible for what happened to those four kids,  
10          it was their burden to prove it. And I submit to you they  
11          have not.

12          VNA and LAN want you to give them a pass. They want  
13          you to blame Darnell Earley for what happened to Aundreya and  
14          Riley and Emir and Daylaana. We heard some from and a little  
15          bit about Darnell Earley during this trial. He was the  
16          emergency manager right before VNA came on the scene. We  
17          learned he knew little, if anything, about corrosion control,  
18          about water treatment, about the plant itself, about how to  
19          train staff at the plant, about lead, about what any of it  
20          meant.

21          There's been no evidence in this trial about what's  
22          motivated Darnell Earley to make whatever decisions that he  
23          made or didn't make, other than the fact that he was Flint's  
24          emergency financial manager, and his job was to try to save  
25          money for the City of Flint.

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1           There's been no evidence in this case that Darnell  
2 Earley ever knew the water wasn't safe. And if Darnell Earley  
3 is even a little responsible for what happened to those four  
4 kids, it was their burden to prove it. And I submit to you  
5 that they have not.

6           VNA and LAN want you to give them a pass. They want  
7 you to blame Gerald Ambrose for what happened to Aundreya and  
8 Riley and Emir and Daylaana. Without any evidence. We heard  
9 some from and about Gerald Ambrose. We learned that just like  
10 the other emergency managers, he knew little, if anything,  
11 about corrosion control.

12           There has been no evidence about what motivated  
13 Gerald Ambrose to do or not do the things he did or didn't do.  
14 There's been no evidence that he knew anything about the plant  
15 or how to treat water. But these defendants want you to  
16 believe that it was because of Gerald Ambrose that nobody  
17 would have ever gone back to the DWSD. He said it was  
18 incomprehensible, and that's the end of the story.

19           But don't take their word for it. Don't take my word  
20 for it. The judge has told you the lawyers's words are not  
21 evidence. Let's hear from Gerald Ambrose himself.

22                               (Recording Played)

23           MR. STERN: Each of these emergency managers who  
24 played any role whatsoever in the decision to switch from the  
25 DWSD to the KWA had expertise in nothing but finances. That

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1 is Story number 1. That is the truth, and that is not in  
2 dispute.

3 And yet the two water engineering companies who knew  
4 so much about each of these things than most people in the  
5 world, let alone these emergency financial managers from  
6 Flint, expect you to believe that it was the folks with no  
7 experience in water treatment, the financial managers who  
8 failed to proper advise or treat or fix the water issues.  
9 With all of the experience in the world called in as the  
10 experts.

11 And worst yet, VNA and LAN's claims against Earley  
12 and Ambrose and Kurtz, their claims are against them  
13 personally. They're not against the City of Flint. They  
14 believe and want you to believe that each of those three men  
15 caused the damage -- that they say didn't happen, by the way  
16 -- caused the damage to Aundreya and Riley and Emir and  
17 Daylaana.

18 These engineers who absolutely knew full well in  
19 realtime that there was no real corrosion control. They knew  
20 full well in realtime that the city's infrastructure was made  
21 of lead pipes and lead fixtures. They stood by silently while  
22 waiting for a bigger KWA payday. But they bear no  
23 responsibility whatsoever. And it's these three guys who were  
24 at fault. If you believe that, perhaps LAN and VNA did  
25 nothing wrong.

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1           Story 2, the damage control story, requires you to  
2 believe that there was a conspiracy. There was a coup d'etat.  
3 There was a cabal where each of these emergency financial  
4 managers one after the other, after the other, after the other  
5 nefariously and with some mysterious personal agenda made the  
6 tragic but self-serving decision of switching Flint from the  
7 DWSD to the KWA.

8           Story 2, the damage control story, requires you to  
9 believe that Ed Kurtz, Gerald Ambrose, and Darnell Earley,  
10 each of whom had nothing to gain from switching to the KWA was  
11 each personally at fault for what happened. And they bear  
12 none.

13           Story 1 is built on the evidence that was presented  
14 to you at trial. Story 2, the damage control story and crisis  
15 management story, was built by weaving inconsistencies with  
16 false narratives together with self-serving tales of greed and  
17 lies and hiding the ball. And like all good fiction tales, in  
18 this one, there's fiction within the fiction. If after five  
19 months of evidence you just don't believe them, if after five  
20 months of evidence you actually think they bear some  
21 responsibility, they did something wrong, they could have done  
22 more, they breached the standard of care, if after five months  
23 you believe that, they have created for you what the best  
24 fiction stories have.

25           They created a choose-your-own-adventure where you

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1 can turn to the fiction within the fiction. If you don't  
2 believe them, if you do think they messed up, if you do think  
3 they are responsible, if the evidence is just too much in our  
4 favor and you don't buy the tale that LAN and VNA did nothing  
5 wrong, how about this? Maybe this will work. The kids aren't  
6 hurt. Not at all.

7 For months, the Story 2 storytellers have referred to  
8 what happened in Flint as a crisis. They have vehemently  
9 pointed their Story 2 fingers at anyone and everyone who's  
10 ever been elected to local government, to state government, at  
11 the EPA or hired to work in state or Federal Government,  
12 blaming them for the crisis that happened in Flint.

13 It was a manmade disaster when everyone else was  
14 responsible. But in the great pivot, in the failsafe chapter,  
15 in the choose-your-own-adventure chapter which only comes in  
16 you reject their excuses and you reject their denial of  
17 responsibility, well, then there actually was no crisis. At  
18 least not for Aundreya or Riley or Emir or Daylaana. They  
19 weren't hurt. Nothing to see here.

20 They want you to believe that when they and everyone  
21 else was referring to the Flint Water Crisis, they meant the  
22 crisis that affected maybe 16 percent of the homes in Flint.  
23 And certainly did not affect those four children.

24 And in doing so, in the great pivot, they want you to  
25 stare at the sun without drinking blinking. They want you to

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1 forget the Pieper article among other things, which expert  
2 after expert after expert relied upon. The Pieper article  
3 that told us that in August of 2015, by August 2015 two or  
4 three or four months after Veolia left the City of Flint, that  
5 88 percent of the homes in Flint had lead.

6 And if you believe that, then perhaps VNA did nothing  
7 wrong. Perhaps LAN did nothing wrong.

8 Story 1 does not have a backup story. Story 1  
9 doesn't have a pivot story. Story 1 is not a  
10 choose-your-own-adventure. Story 1 is the story. Story 1 is  
11 true.

12 Story 2 comes with caveat upon caveat upon caveat.  
13 Backup story upon backup story upon backup story where science  
14 isn't science. Where safe isn't safe. Where a crisis is not  
15 a crisis. And where four kids with significantly high lead  
16 levels in their bones simply were not hurt.

17 During this trial, Story 1 was built brick by brick  
18 by brick with evidence. Story 2 was a house made out of  
19 straw.

20 In Story 1, raw Flint River water is more corrosive  
21 and requires more treatment than water from Lake Huron. For  
22 most of this trial, that wasn't even an issue. Our first  
23 witness, Dr. John Hoaglund, he talked to you about scaling,  
24 about pH and alkalinity, about corrosivity, about how  
25 molecules dance in order to explain to you the water chemistry

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1 of the Flint River all in an effort to try to get us to  
2 understand what was coming into the plant in its raw form.

3 And throughout this trial, at least until early July,  
4 near the end, that testimony was uncontroverted. It was not  
5 questioned. Even Warren Green, one of the Story 2 authors,  
6 agreed that water from the Flint River is more corrosive in  
7 its natural form than water from Lake Huron.

8 But in one of the later chapters of Story 2, the  
9 crisis management story, VNA's water chemistry expert, Graham  
10 Gagnon, came here as the anti-Hoaglund to talk to you about  
11 water chemistry. This is the man they brought to court to  
12 tell you everything an expert knows about water chemistry,  
13 about corrosivity, about how the corrosivity affects the pipes  
14 and the infrastructure and the way the water interacted with  
15 those pipes.

16 But unlike Dr. Hoaglund, unlike Warren Green,  
17 Dr. Gagnon would not even admit on the stand that water from  
18 the Flint River was more corrosive in its natural form than  
19 water from Lake Huron.

20 Judge Levy had to ask him directly, "I think we're  
21 going to get to that. But do you -- maybe you don't know if  
22 the Flint River is just more corrosive before treatment than  
23 Lake Huron was before treatment?"

24 And then she asked Mr. Maimon, "Is that what you want  
25 to know?"

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1 And Mr. Maimon said, "Yeah, that's exactly what I  
2 want. And if you don't know, just tell me you don't know."

3 And Dr. Gagnon, their water chemistry expert who came  
4 here as their expert to talk to you about water chemistry, he  
5 didn't even know or testify that he didn't know whether water  
6 from the Flint River was more corrosive than water from Lake  
7 Huron.

8 During those months when this was not an issue, we  
9 saw published articles about this. We heard testimony about  
10 this. It was clear that Flint River water was more corrosive.  
11 The Pieper article told us in no uncertain terms. Articles  
12 with expert upon expert upon expert relied upon. The Flint  
13 River water was a more corrosive and unstable water source.

14 Not only would he not say that the Flint River water  
15 was more corrosive, he got on that stand and said he didn't  
16 think there was lead in the kids' schools. He had not seen  
17 any documents to that effect. And more importantly, because  
18 of his experience and his expertise, schools just generally  
19 don't get as much lead because of the size of their pipes.

20 He didn't look at Exhibit 5085 from Aundrea Teed's  
21 school, which shows that on October 24 and 31, lead levels  
22 were as high as 326 parts per billion in 2015 in her school.

23 He didn't talk to you about Durant-Tuuri-Mott  
24 Elementary School where Emir Sherrod went. Where in November  
25 of 2015, lead levels in some places were as high as



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1 2,856 parts per billion.

2 He didn't review or talk about or even know that at  
3 Daylaana Ware's school in November of 2015, lead levels were  
4 as high as 349 parts per billion.

5 And when it came to the chemistry of the Flint River  
6 and whether it was more corrosive, he just couldn't do it. He  
7 wouldn't do it. And when he got pushed to give a straight  
8 answer, he said, "I don't know." That's their man. That's  
9 their guy. That's their expert on water chemistry. And it  
10 did not stop there.

11 Dr. Gagnon, one of the final two storytellers who  
12 came here to testify, he told you that whether the Flint River  
13 was more corrosive didn't even matter. It didn't even matter.  
14 Let that sink in.

15 VNA's water chemistry expert testifying at trial  
16 about the Flint Water Crisis, a crisis involving corrosion,  
17 corrosion occurring from water from the Flint River, told you  
18 that the chemistry and composition and corrosivity of that  
19 water just did not matter. Boldly, blatantly, and  
20 unapologetically. And if you believe that, then perhaps VNA  
21 did nothing wrong.

22 In Story 2, VNA's not the only one that brought you  
23 some questionable science and experts to talk about that  
24 science. For years, Warren Green and LAN analyzed and made  
25 proposals and wrote reports about how to treat and how to make

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1 better Flint's water treatment plan and distribution system.

2 Report after report after report after report.

3 And in those reports before damage control, before  
4 crisis management mode, LAN had no problem differentiating,  
5 separating, softening from corrosion control.

6 In his first report that Warren Green ever wrote on  
7 page 3-11, he's got softening. And on page 3-12 he's got  
8 corrosion control. Softening became corrosion control when it  
9 had to. But don't be mistaken. Softening is not corrosion  
10 control.

11 In Story 1, the true story, y'all have heard about  
12 this June 26, 2013, meeting that happened between some folks  
13 from the MDEQ, folks from the city, and some folks from LAN.  
14 This big meeting on June 26, 2013.

15 In Story 1, when that meeting took place, Warren  
16 Green and everyone there were told by Stephen Busch that Flint  
17 would be doing two six-month rounds of monitoring. Then a  
18 corrosion-control study. And then determining what the proper  
19 corrosion control would be.

20 In Story 1, the true story, Warren Green absolutely  
21 knew and during this trial admitted that engineering best  
22 practices were to do a corrosion-control study before the  
23 Flint River went online.

24 And I asked him, "You just told us a few minutes ago  
25 and you told us yesterday, it would be best practices to

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1 perform a corrosion-control study for the Flint River before  
2 putting it into use as a water source, right?"

3 His answer, "Correct."

4 In Story 1, when he heard from Steve Busch that they  
5 were going to be doing two six-month rounds of monitoring  
6 rather than real corrosion control, the first thing Warren  
7 Green said to Stephen Busch, by his own admission on the  
8 stand, "I don't typically get in anybody's face, you know.  
9 But I did talk to him about corrosion control. When he said  
10 that, I said, 'Steve, I don't understand this.'"

11 Well, if softening is corrosion control and the plant  
12 was going to be softening, what was there not to understand?

13 Warren Green, who had worked on issues involving the  
14 plant for 15 years, whose experience in water engineering, in  
15 water treatment, in utility design was touted by LAN  
16 throughout this trial. He never said anything more.

17 In Story 1, the true story, Warren Green never  
18 insisted on a corrosion-control study. Warren Green never  
19 warned anybody about what would happen without using proper  
20 corrosion controls.

21 In Story 1, the true story, Mike Glasgow told us that  
22 Flint's water distribution system was dilapidated.

23 "Did you ever ask your superiors for data and  
24 information on the distribution system prior to the spigot  
25 being opened?

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1 A. I would say yes.

2 Q. Is that how you knew it was in a dilapidated  
3 condition?

4 A. Yes."

5 In Story 1, the true story, the Flint Water Treatment  
6 Plant where Warren Green spent over 15 years of his career, at  
7 least throughout those years at times, it was undermanned, it  
8 was understaffed. The staff was under-trained.

9 And in Story 1, the true story, despite the  
10 dilapidated distribution system, despite Flint's dilapidated  
11 infrastructure, despite the plant being undermanned with  
12 people under-trained, when Warren Green found out that Flint  
13 would not be doing a corrosion-control study, when he found  
14 out that the test run failed, he didn't tell anyone in Flint  
15 that they needed to do one either time. He didn't light  
16 himself on fire. He didn't write a letter to the governor.  
17 He didn't write a letter to the MDEQ. He didn't write a  
18 letter to the EPA. He didn't write a letter to the President  
19 of the United States. He didn't write a letter to the City of  
20 Flint to one of the emergency managers.

21 In Story 1, the true story, Warren Green sat on his  
22 hands waiting for a KWA payday. And when we talk about LAN  
23 and we talk about Warren Green, let's not forget as we heard  
24 at the very beginning of this trial that Warren Green is LAN,  
25 and LAN is Warren Green. And LAN is LAD. And LAD is LAN.

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1 And Jeff Hansen is LAN. And LAN is Jeff Hansen. And Jeff  
2 Hansen is LAD and LAD is Jeff Hansen.

3 We heard from Edward Benes. You probably -- and I  
4 don't mean any disrespect to Mr. Benes, but you may not even  
5 remember him. So I'm going to play just a short clip of his  
6 testimony when talking about LAN and LAD. Let's hear from  
7 Mr. Benes.

8 (Recording Played)

9 MR. STERN: For 15 years, every LAN employee was  
10 leased from LAD. Year after year after year after year after  
11 year. Every single one. Every single employee.

12 Warren Green's W-2 shows that he was an employee of  
13 LAD. Jeff Hansen's W-2 shows that he was employed by LAD. In  
14 their 2013 proposal to the City of Flint to do work on the  
15 treatment plant, they held themselves out as one company with  
16 resources across the world.

17 We get to another jury instruction on vicarious  
18 liability. Vicarious liability is fancy legal words. And  
19 what it says is in this case, there is no dispute -- as I just  
20 showed you some evidence of -- there is no dispute that Warren  
21 Green and Jeffrey Hansen were employed by the Leo A Daly  
22 Company , LAD.

23 You must determine whether LAD exercised or retained  
24 the right to exercise day-to-day control or supervision of  
25 their specific work activities in connection with their work

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1 on the Flint Water Treatment Plant.

2 May I use the ELMO for a second? Is that a problem?  
3 It's okay. May I just walk up for a minute?

4 THE COURT: I don't want you to go too close without  
5 a mask.

6 MR. STERN: That's okay. I'm going to hold it right  
7 here. On the verdict form, and it's a long, long verdict  
8 form. There's going to be a question, and it's Question  
9 number 6. Question 6 on your verdict form is about LAN and  
10 LAD.

11 "Did LAD exercise or retain the right to exercise  
12 day-to-day control or supervision of the specific work  
13 activities of Warren Green and Jeff Hansen in connection with  
14 their work on the Flint Water Treatment Plant?"

15 The answer is yes. There's no evidence to the  
16 contrary. LAN is LAD. LAD is LAN. They were paid by LAD.  
17 They held themselves out as LAD.

18 The reason it says, "Verdict form Question 6," is  
19 because we got it this morning, and I couldn't include it in  
20 my slides. I'm sorry.

21 In Story 1, the true story, Warren Green sat in  
22 meetings with and got to know Howard Croft, a man who by his  
23 own admission knew little, if anything, about corrosion  
24 control.

25 In Story 1, the true story, Warren Green sat in

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1 meetings with and got to know Mike Glasgow, a man who by his  
2 own admission when he sat for his F1 license which everyone  
3 talked about is necessary to run a Water Treatment Plant, he  
4 told us he wasn't even really qualified to sit through that  
5 test and had to jump through hoops in order to take it.

6 But in Story 2, the damage control story, Warren  
7 Green was shut out, despite being asked to come train the  
8 folks at the Water Treatment Plant on softening.

9 In Story 2, the damage control story, no one would  
10 listen to Warren Green except when they asked him to work on  
11 the capital improvement program and reprice the upgrades for  
12 the Flint Water Treatment Plant and design the phosphate feed  
13 system that was actually in an earlier proposal from LAN that  
14 they took out.

15 And by the way, if softening is corrosion control,  
16 why did no one ever put it in writing? Not LAN. Not the  
17 city, not the MDEQ. No one.

18 In Story 1, when Dayne Walling first ran for mayor,  
19 he lost. Dayne Walling, who after finishing his Rhodes  
20 Scholarship education, brought his family with his wife to  
21 Flint to raise their kids. In Story 1, the true story,  
22 Mayor Walling was elected to serve as mayor only after the guy  
23 who beat him resigned.

24 In Story 1, the true story, Mayor Walling then ran  
25 for reelection. And within hours after being reelected to a

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1 second term, he was neutered of his power by state statute,  
2 because Flint was in an emergency financially. So much so  
3 that for a time, he lost his salary. So much so that when he  
4 went into his office day after day after day, for a long time,  
5 he did so with no official duties, with no power, and with no  
6 paycheck. But he still showed up every day.

7 And despite being neutered of all of his power,  
8 despite knowing nothing at the time about water treatment or  
9 about corrosion control or about how to make the water safe or  
10 whether it was safe at all, despite knowing little, if  
11 anything at all in realtime about the Flint Water Treatment  
12 Plant, he still went to his office and met with citizens of  
13 Flint every day to listen to their concerns, to talk to them.

14 And despite his education, which probably would have  
15 allowed him to do a ton of other things, he never bailed. He  
16 never pivoted. He tried his best, as he said, to at least add  
17 some comfort to his community.

18 Mayor Walling tried to figure out solutions to  
19 problems he didn't even understand. In Story 1, the true  
20 story, Mayor Walling , when it hit the fan, he didn't  
21 creatively pivot to damage control or crisis management. He's  
22 a Rhodes scholar, but he didn't write a  
23 choose-your-own-adventure book or add more chapters.

24 In Story 1, the true story, when it hit the fan,  
25 Mayor Walling wrote to the EPA and insisted that they put



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1       somebody on the Flint Technical Advisory Group. He wrote to  
2       Governor Snyder and begged for help. He wrote to the  
3       President of the United States and asked for help.

4               In Story 1, the true story, Mayor Walling is as much  
5       haunted by that moment where he flipped the switch, which they  
6       showed you time after time after time as he is about what was  
7       not included in VNA's report.

8               But in Story 2, the damage control story,  
9       Mayor Walling failed in his duties, which he didn't have. He  
10      failed to exert any power over the situation, power which he  
11      didn't have. He failed to use his vast experience and  
12      understanding in water chemistry and water treatability, which  
13      he didn't have, to fix a solution which he didn't understand.

14              Dayne Walling told us honestly how this haunted him.  
15      And his own notes, his own notes are filled with honest  
16      questions and earnest prayers and confusion. It hurts me, a  
17      man of compassion not putting people's lives at risk but  
18      working hard with people who can get it fixed. Flint River,  
19      lead, costs. I won't turn my head.

20              But in Story 2, the crisis management story, they lay  
21      blame at his feet. In Story 1, Mayor Walling stayed in Flint  
22      even after he lost his reelection bid where he still lives  
23      today. For the Story 2 tellers, he's one of the villains.

24              When it comes to Howard Croft, Story 1 is built on  
25      facts. Story 2, the damage control story, when it comes to

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1 Croft, is built on spin and innuendo and tales of deceit where  
2 Mr. Croft hid LeeAnne Walters's test results.

3 In Story 1, though, the truth was revealed that  
4 everyone, including Miguel Del Toral, looked at the Walters's  
5 lead results as a one-off, especially when testing revealed  
6 that her neighbors had no lead in their tap water. Let's hear  
7 from Miguel Del Toral.

8 (Recording Played)

9 MR. STERN: And if you have any doubts about Miguel  
10 Del Toral's testimony, if you have any doubts about Miguel,  
11 who on his own dime went to LeeAnne Walters's and did some  
12 work to try and find out what the issues were at her house,  
13 remember what Mike Glasgow said.

14 Mr. Maimon asked him, "What did Miguel Del Toral tell  
15 you about whether or not he needed high lead levels to know  
16 there was a problem?

17 A. Yeah. He told me he did not need the high lead  
18 levels to realize there was an issue."

19 But in Story 2, the damage control story, you need to  
20 believe that Croft and other city officials who clearly knew  
21 as much about corrosion control as they did about time travel  
22 purposefully hid information about the lead levels in  
23 Ms. Walters's home. Despite knowing little if anything about  
24 corrosion control or water treatment or what her levels meant  
25 or why it mattered.

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1           In order to believe Story 2, the damage control  
2 story, you have to believe that having nothing to gain  
3 personally or professionally, Howard Croft was central to the  
4 conspiracy wherein they were going to poison kids no matter  
5 what.

6           Story 2, the damage control story, when it comes to  
7 Howard Croft is a story of a man who for no particular reason  
8 became a subversive, nefarious, highly scheming man.  
9 Poisoning a community for some personal gain in ways no one  
10 articulated with a knowledge base everyone heard he didn't  
11 have, for reasons no one can explain.

12           Story 2, the damage control story, is the one where  
13 two very large water engineering companies blames the guys who  
14 everyone admits knew absolutely nothing about corrosion  
15 control for the corrosion that happened in Flint. And if you  
16 believe that, then perhaps VNA and LAN did nothing wrong.

17           Story 2, the damage control story, was written by the  
18 engineers for the engineers to absolve the engineers of all  
19 fault whatsoever for the corrosion that occurred on their  
20 watch through, at least October of 2015, in the pipes and  
21 water system that VNA was committed to looking at from the  
22 Water Treatment Plant that LAN was committed to upgrading.

23           In Story 2, the damage control story, if VNA had been  
24 told about LeeAnne Walters's high test results, it would have  
25 made all the difference in the world. According to Story 2,

1 that would have been a game changer.

2 But in Story 1, the true story, it wouldn't have  
3 mattered at all. In Story 2, the choose-your-own-adventure,  
4 VNA claims that if they had lit themselves on fire, if they  
5 had marched into Governor Snyder's office, pounded on his desk  
6 and got in face and said, "You have got to go back to DWSD for  
7 Flint no matter what," that he would have thrown them out of  
8 the office and shut the door.

9 But a few chapters earlier or a few chapters later or  
10 perhaps in the same chapter of Story 2, they insist that the  
11 LeeAnne Walters's test results would have made all the  
12 difference.

13 You need to ask yourself how those two things can  
14 coexist at the same time. If their defense is that no one was  
15 ever going back to DWSD, even though they did, and their other  
16 defense is that had they known about the Walters's test  
17 results, it would have made all the difference, you have to  
18 try and look at both things at the same time. And one is in  
19 front of you, one is behind you, and it's simply impossible.  
20 VNA cannot have it both ways. They literally want you to  
21 stare at a unicorn while keeping a cyclops in your rearview  
22 mirror. Look at this unless I need to you look at this. Look  
23 at that unless I need you to look at this.

24 In Story 2, everyone in government, the state, the  
25 city, the EPA was hiding the Walters information from them.

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1 They were hiding it, because -- we never really found out why  
2 they were hiding it. They never explained it in Story 2.  
3 There's no evidence of why anyone would have. There's no  
4 evidence of anyone who would have benefited financially from  
5 going to the KWA other than perhaps VNA and LAN, who both were  
6 hoping to get contracts to do work on the KWA.

7 There's no evidence of any political or personal gain  
8 for any of the government folks who were involved.

9 But in Story 1, no one hid anything from anyone. In  
10 Story 1, Mike Glasgow explained that he believed that LeeAnne  
11 Walters's home was a one-off. He said, "After sampling from  
12 her residence a second time, I sent letters to immediate  
13 neighbors asking to collect water samples. Both lead and  
14 copper were not detected. Lead was not detected."

15 We've already played for you, I've already played for  
16 you the clip from Miguel Del Toral -- I won't play it again --  
17 where he says that was not indicative of a larger problem in  
18 realtime while he was there on the ground on his own dime.

19 Howard Croft told us that LeeAnne Walters in realtime  
20 was a one-off. Let's hear from Howard Croft.

21 (Recording Played)

22 MR. STERN: In Story 1, Mayor Walling told us that  
23 what was going on in LeeAnne Walters's house in realtime was  
24 believed to be a one-off.

25 "Q. You already stated during your testimony a

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1 minute ago that you believed the Walters's residence was a  
2 one-off situation, correct?"

3 And he said, "Yes."

4 Rob Bincsik, who came to court called by VNA to  
5 testify about how concerned he was about this large problem in  
6 Flint, even he admitted that ultimately:

7 "Q. And so you were saying here to Mr. Glasgow,  
8 Mr. Croft, Mr. Johnson, and Mr. Wright is that you were happy  
9 to hear that none of the neighbors had lead in their water --  
10 had any lead detected, because if they had, that would point  
11 to a much larger problem in the area, and perhaps a systemwide  
12 problem. That's what you told those people?"

13 And he said, "Correct."

14 And I want you to seriously consider this. I mean, I  
15 want you to seriously consider everything. But I especially  
16 want you in this moment to consider this. Please consider  
17 that each of these defendants, each of whom say they didn't  
18 warn, because they didn't need to. These water engineering  
19 experts who despite knowing that there was no corrosion  
20 control, who despite knowing that the entire infrastructure  
21 was comprised primarily of lead pipes and lead fixtures simply  
22 stood by while they were waiting to get perhaps a larger  
23 payday.

24 These engineers are using Ms. Walters as the  
25 foundational piece of their defense. Ms. Walters, who by all

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1 accounts got the EPA to listen, who by all accounts got Miguel  
2 Del Toral to listen, who by all accounts got Marc Edwards to  
3 listen, who by all accounts got Dr. Mona Hanna-Attisha to  
4 listen, who by all accounts got Governor Snyder to listen,  
5 because she got all of the others involved.

6 These defendants, water engineers who were hired to  
7 solve the problems that the city and the state couldn't, who  
8 claimed they had no power to do anything of substance when it  
9 came to getting Flint back to the DWSD are using a Flint mom's  
10 situation as the foundational piece of their defense, a Flint  
11 mom who got everyone to listen. Everyone the engineers say  
12 wouldn't have listened to them. And if you believe that and  
13 you believe them, then perhaps LAN and VNA did nothing wrong.

14 In Story 1, the true story, when Michigan's executive  
15 office led by Governor Snyder determined that there was an  
16 E. coli problem in Flint, they did what they could to fix it.  
17 When they found out that there was a TTHM problem in Flint,  
18 they did what they could to fix it. When they found out there  
19 was a Legionella problem in Flint, they did what they could to  
20 fix it. And when ultimately they figured out that there was a  
21 lead problem in Flint that would affect the public health and  
22 safety, within two weeks, they were back on Detroit water.

23 In Story 1 when Governor Snyder had credible  
24 information from Dr. Mona Hanna-Attisha, from Miguel Del  
25 Toral, from Marc Edwards, he did everything he could as

1 quickly as he could to get Flint back to Detroit. He did and  
2 Flint did.

3 And despite that, despite having no education in  
4 water chemistry and corrosion control, despite being the one  
5 who actually found a way to get Flint back to the DWSD, by  
6 video, he said here on the stand and he took responsibility  
7 for the state's role in the Flint Water Crisis. He took  
8 responsibility for what happened to Aundreya and Riley and  
9 Emir and Daylaana. He didn't beg off. He didn't pivot. He  
10 didn't create a new chapter.

11 In Story 1, the true story, orthophosphates were  
12 needed to make the water safe. First and foremost, our  
13 expert, Richard Humann came and told you that the city should  
14 have continued to feed orthophosphates into the water even  
15 after the switch from the DWSD to the Flint River. Plain and  
16 simply.

17 In the jury instructions, you're going to read about  
18 professional negligence. This is getting into the heart of  
19 proving that LAN and VNA are responsible for what happened to  
20 our four clients. The plaintiffs in this case allege that the  
21 two defendants, LAN and VNA each committed professional  
22 negligence.

23 The plaintiffs bear the burden of proving each  
24 element of their professional negligence claim with respect to  
25 each of the two defendants. For each defendant, each



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1 plaintiff has the burden to prove that, A, the defendant  
2 breached the standard of care for a professional engineer. B,  
3 the plaintiff sustained injury resulting in damages. And, C,  
4 that the defendant's alleged breach of the standard of care  
5 was a proximate cause of the plaintiff's injury and damages.

6 Now, when you get the instructions or the verdict  
7 form, A is not going to be highlighted and italicized and made  
8 red and underlined. I did that for you, because here the  
9 letter A has real meaning. The defendants alleged breach of  
10 the standard of care does not need to be the proximate cause.  
11 It needs to be a proximate cause.

12 And we'll talk about that more in a minute. But for  
13 months and months and months, you heard about scope of work.  
14 You heard about contracts. You heard people testify, experts  
15 for the defendants get on the stand and say, "I don't know if  
16 it was in their contract. I don't know what was in their  
17 scope." Or, "It wasn't in their contract. It wasn't in their  
18 scope."

19 When you look at the jury instructions, read them  
20 closely. They're dense. No disrespect. They're boring. But  
21 a professional engineer's standard of care is not defined by  
22 the language of their contract. And when they stand up, if  
23 they talk about scope, if they talk about contracts, somewhere  
24 in your minds, store it. Put it on your hard drive.

25 A professional engineer's standard of care is not

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1 defined by their contract.

2 We just talked for a minute about the letter A, and I  
3 pink-purple A thing for you just to make it stand out. This  
4 is important. There may be more than one proximate cause of a  
5 plaintiff's injury. A defendant's professional negligence is  
6 a cause of a plaintiff's injury if it was a substantial factor  
7 in bringing his or her injuries about. To be a substantial  
8 factor, a cause must not merely be -- sorry. Must not -- must  
9 not be merely a slight or trivial cause of a plaintiff's  
10 injuries. You may, however, decide that a defendant's  
11 professional negligence is a substantial factor, even if you  
12 assigned a relatively small percentage of fault to that  
13 defendant.

14 Now, I don't show you that, because I think you  
15 should assign a relatively smart percentage of fault to these  
16 defendants. When my partner, Moshe Maimon, gets up here to  
17 talk to you about damages, about apportionment, he's going to  
18 tell you why. I show you that to show you that "substantial  
19 factor" doesn't mean it has to be a large percentage, but we  
20 think it is.

21 Let's talk about standard of care. If I was allowed  
22 to give you, like, one index card, which I'm not. If I was  
23 allowed to take notes for you, which I'm not. If I was  
24 allowed to hand you anything, which I'm not, I would want you  
25 to take this with you. These words. The exact standard of

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1 care as defined by Richard Humann.

2 "Engineering is an important and learned profession.  
3 As members of this profession, engineers are expected to  
4 exhibit the highest standards of honesty and integrity.  
5 Engineering has a direct and vital impact on the quality of  
6 life for all people.

7 "Accordingly, the services provided by engineers  
8 require honesty, impartiality, fairness, and equity and must  
9 be dedicated to the protection of public health, safety, and  
10 welfare.

11 "Engineers must perform under a standard of  
12 professional behavior that requires adherence to the highest  
13 principles of ethical conduct."

14 Honesty, integrity, impartiality, fairness, ethical  
15 conduct, safety, welfare.

16 30,000 foot view. I'm going to talk in the next few  
17 minutes about what Mr. Humann says that they did -- that these  
18 defendants did not do to meet the standard of care. But  
19 30,000 feet. Just looking at this from 30,000 feet. You've  
20 sat here for five months of testimony every day on time at  
21 8:30. You've heard from close to 50 witnesses during this  
22 trial.

23 Before we talk about what Mr. Humann says LAN and VNA  
24 did or didn't do, ask yourself based on everything you've  
25 heard, did VNA and LAN act honestly? Did VNA and LAN act with

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1 integrity? Did VNA and LAN act to protect the health, safety,  
2 and general welfare of Aundreya, Riley, Emir, and Daylaana?

3 When it comes to VNA in particular, the jury  
4 instruction that you're going to get says, "Plaintiffs allege  
5 that VNA breached the standard of care by failing to recommend  
6 one or both of the following two options to the City of  
7 Flint."

8 1, "The immediate implementation of orthophosphate  
9 corrosion inhibitors." And/or, 2, "A return to receiving  
10 water from the DWSD, from the Detroit Water and Sewerage  
11 Department."

12 It's actually very simple. What Richard Humann said  
13 is, "Use orthophosphates or go back to Detroit. Use  
14 orthophosphates or turn off the spigot."

15 But it's not just Richard Humann. Let's hear one  
16 more time from Miguel Del Toral.

17 (Recording Played)

18 MR. STERN: It's as simple as that.

19 Mr. Humann got into some more detail in his testimony  
20 about what the violations were. And the first thing he says  
21 about VNA -- and that's not Mr. Humann. It's William Fahey  
22 who testified, and he was one of the first VNA witnesses.

23 The first thing Mr. Humann said was VNA needed to  
24 inform the city that an orthophosphate feed system was  
25 necessary. Mr. Humann said that the honesty, the integrity,

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1 and the obligation to protect the health, safety, and welfare  
2 of the general public required it. And he says that VNA did  
3 not meet that standard of care.

4 And we know that there was no mention of  
5 orthophosphates in their report, and we also know -- and this  
6 is a quote from Mr. Humann. "Well, we -- you know, we  
7 communicate our recommendations through our reports. That's a  
8 mechanism that we use. So it's important for our clients to  
9 understand our recommendations."

10 There's no recommendation for orthophosphates or for  
11 an orthophosphate feed system anywhere in VNA's final report.  
12 In fact, we know that the report calls on polyphosphates,  
13 polyphosphates over and over again.

14 And, in fact, VNA did the opposite. Instead of  
15 recommending an orthophosphate feed system or any of the other  
16 things that Mr. Humann says they needed to do or should have  
17 done, over and over and over again in front of people from the  
18 community, in front of emergency managers who knew nothing  
19 about corrosion control, in a city that was in financial  
20 crisis, on February 18, 2015, VNA repeatedly told everyone  
21 that their water was safe.

22 The second thing that Mr. Humann says about VNA is  
23 that they needed to address corrosion control to deal with the  
24 potential for lead leaching out of the pipes. We know that  
25 they didn't address corrosion control for lead. In fact, they

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1 took references to lead out of the final report. On its face,  
2 if you believe Mr. Humann, that's a violation.

3 We know that they didn't recommend corrosion control  
4 for lead, because Marvin Gnagy told us that the polyphosphates  
5 that they recommended in the report were for red water.

6 "Q. Well, you were suggesting a polyphosphate feed,  
7 right?

8 A. I was suggesting that for the red water, yes."

9 The third thing that Mr. Humann says that VNA should  
10 have done was to insist on an orthophosphate. He said that  
11 the standard of care requires it. We know that that didn't  
12 happen.

13 In fact, Depin Chen recommended a poly and an  
14 orthophosphate blend in one of his drafts. Add corrosion  
15 control measures. Add poly-orthophosphate to finished water.  
16 Add corrosion control. Install poly-orthophosphate and feed  
17 systems. But that never made its way to the report. On its  
18 face, if you believe Mr. Humann, and you should, that's a  
19 violation of the standard of care.

20 And if you don't believe the draft, if you think it's  
21 something that someone created from trial, let's hear from  
22 Mr. Chen, VNA's engineer who wrote it himself.

23 (Recording Played)

24 MR. STERN: In Story 1, VNA brought you Dr. Bellamy.  
25 He was their \$250,000 man. He was one of their experts. And

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1 he told you that VNA acted appropriately, that they did not  
2 breach the standard of care. And here's why. Assuming that  
3 Mr. Gnagy recommended orthophosphate for lead corrosion to  
4 Mr. Bincsik in their oral conversation, by doing so, VNA met  
5 the standard of care to meet its duty. That's what he said,  
6 and perhaps he's right.

7 But we know that Mr. Gnagy didn't recommend  
8 orthophosphates for anything. And all of the recommendations  
9 that involved any type of phosphate in the report or spoke to  
10 corrosion control in the report were all about red and dirty  
11 and smelly water.

12 The second thing that Bellamy says -- sorry --  
13 Dr. Bellamy says is, "Assuming VNA recommended in its final  
14 report orthophosphate for lead corrosion, by doing so, VNA met  
15 the standard of care." He might be right. But we know with  
16 certainty from the horse's mouth that any recommendations in  
17 VNA's final report had nothing to do with lead.

18 Their recommendations had to do with red water. And  
19 no matter how many times they try and tell you both ways that  
20 the guy that stood up there and said it's red water, really  
21 didn't mean it. Look at the report and look at his testimony.  
22 Until trial, all of the recommendations were about red and  
23 dirty water. And none of them had anything to do with lead.

24 And third, Dr. Bellamy, their expert, the quarter of  
25 a million dollar man who came and testified before you, said,

1 "Assuming that VNA recommended in its final report that the  
2 City of Flint and the MDEQ conduct a corrosion-control study.  
3 By doing so, VNA met the standard of care."

4 We've been over the VNA report 20 times during this  
5 trial. It's in evidence. If y'all can find in that report  
6 where VNA recommended a corrosion-control study to anybody and  
7 if you can find those words in that report, you will be the  
8 first eight people in the history of the world that will have  
9 been able to.

10 When he was cross-examined, my partner, Moshe Maimon,  
11 asked him, they looked at this part of the report, this part  
12 that talked about contracting with your engineer and  
13 initiating discussions with the state about the addition of a  
14 .5 milligrams per liter phosphate.

15 This was what was in the report, and this is what  
16 Dr. Bellamy relied on when he said that VNA met its standard  
17 of care, because here they recommended an orthophosphate.  
18 Despite the fact that the man who put the words in the record,  
19 Marvin Gnagy said no such thing. And, in fact, said the  
20 opposite.

21 "Q. When you read VNA's final report as you  
22 testified to in your deposition, you saw the recommendation to  
23 contract with your engineer and initiate discussions with the  
24 state on the addition of a corrosion control chemical to be  
25 dealing with orthophosphates for lead, true?"



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1 And he said --

2 "Q. That's what you said, right? This does -- you  
3 said under oath this does not relate to the red water  
4 problems, right?

5 A. That was by interpretation of that .5, that's  
6 correct."

7 VNA's expert, who says they met the standard of care,  
8 that's the testimony. He says that they recommended something  
9 based on a report that the guy who wrote it says means  
10 something completely different. That is Story 2.

11 And finally, when it comes to VNA, Richard Humann  
12 said that VNA needed to inform the city that returning to  
13 Detroit was the best and safest option. We know that didn't  
14 happen. Depin Chen, "Seems that reconnecting to the DWSD will  
15 be the best solution." We know that that recommendation  
16 wasn't made.

17 Rob Nicholas, before VNA was ever even on the job  
18 said in writing internally to nobody but folks from VNA that,  
19 "The simple solution is to just buy Detroit water, and that  
20 solves the problem."

21 Joseph Nasuta, one of VNA's engineers, sent an email  
22 internally to Gnagy and Chen and said, "The quickest and maybe  
23 the safest option is to return to Detroit water. We can say  
24 we have not evaluated the cost impacts of that option if we  
25 have not, but we need to tell BD that it's an option." And

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1 then at the bottom, he says, "Keep this in the group."

2 And William Fahey, William Fahey in 2016, I guess in  
3 a moment of clarity or reminiscence or "I told you so" said,  
4 "Now you know why I was so adamant about taking the position  
5 that the best available alternative was to go back on Detroit  
6 water."

7 And we know that never made it in the report despite  
8 all of the internal emails.

9 On your verdict form, you are going to have to answer  
10 a question, "Did Veolia North America breach the standard of  
11 care for a professional water engineer?"

12 Document after document after document, testimony  
13 upon testimony upon testimony, witness after witness after  
14 witness with experts on our side that say they did and experts  
15 on their side that say they didn't, experts who relied on the  
16 meaning of a report that the author says it didn't mean.

17 I submit to you that when you answer that question,  
18 it is absolutely yes. Question number 2 on your verdict form.

19 Now, let's talk about LAN. This is another one of  
20 the jury instructions from the Court. Plaintiffs allege that  
21 LAN breached the standard of care by failing to sufficiently  
22 recommend the use of orthophosphate corrosion inhibitors to  
23 the City of Flint when it switched its water supply to the  
24 Flint River and/or sufficiently or adequately warn against  
25 operation of the Flint Water Treatment Plant without use of

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1 orthophosphate corrosion inhibitors prior to the switch of  
2 water source to the Flint River.

3 Again, it's very simple. Use orthophosphates or  
4 don't turn on the spigot. I'm not going to play the clip from  
5 Miguel Del Toral again just in the interest of time. But you  
6 heard him. I asked him the longest -- well, you've heard a  
7 lot of longwinded questions from me.

8 But I asked him a very long-winded question. I asked  
9 him about all the stuff, "And would that indicate to you that  
10 there's a problem?"

11 And he looked at me during his deposition and by  
12 video looked at you during trial and said, "I didn't need any  
13 of that. You tell me you've got no corrosion control. You  
14 tell me you've got lead pipes. I don't need anything else.  
15 You've got a problem. And it's as simple as that."

16 The first thing that Mr. Humann said about LAN was  
17 that they were required to inform the city that they needed to  
18 treat with an orthophosphate and what the risks of not doing  
19 so were. We know they didn't do that. We know they didn't do  
20 it. They admit they didn't do it. They brought to you  
21 Professor Desmond Lawler, who said it would have been wrong to  
22 add an orthophosphate.

23 "Q. Now, you're aware that Mr. Humann has opined  
24 that he felt that orthophosphates should have been used from  
25 the start as of April 2014. You're aware of that?

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1 A. I am aware of that, yes.

2 Q. And do you agree with that opinion?

3 A. I definitely do not agree with that opinion,  
4 sir."

5 That was Desmond Lawler's testimony on the stand  
6 despite the fact that everybody knows that once  
7 orthophosphates were added back to the water, once Flint went  
8 back to the DWSD and then continued adding additional  
9 orthophosphates, the problems got better and ultimately ended.

10 And then in some twist of fate or I don't know what  
11 happened while he was on the stand. After an hour and 25  
12 minutes or an hour and 30 minutes of telling you over and over  
13 and over again that softening was the appropriate thing to do,  
14 that softening was the right thing to do, that all the  
15 literature supports softening, that softening is corrosion  
16 control, at the very, very end of his testimony, my partner  
17 asked him, "Agree or disagree, water softening is not at all  
18 the same thing as corrosion control?" And he said, "I agree."

19 Five months of softening is corrosion control.  
20 Softening is corrosion control. Didn't need to do anything.  
21 Nothing to see here. It was the right thing to do. The  
22 proper thing to do. Their expert who didn't make as much as  
23 Dr. Bellamy but still made \$80,000 to come to court to tell  
24 you that LAN did nothing wrong, a premise based on the fact  
25 that softening is corrosion control, at the very end of his

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1 testimony looked you all in the eyes and told my partner when  
2 it came to water softening, water softening is not at all the  
3 same thing as corrosion control.

4 The second thing that Mr. Humann said that LAN needed  
5 to do and didn't was inform the city that they needed to  
6 include a phosphate feed system in their plant design. You  
7 may not remember Jeff Hansen, either, although his name has  
8 been used quite a bit. I think he was our second witness. He  
9 worked for LAN. He was paid by LAD. LAD was Jeff Hansen, LAN  
10 was Jeff Hansen. You heard all of it.

11 We know with certainty that LAN didn't recommend a  
12 phosphate feed system. And you might not remember this,  
13 because it happened so early in the trial. But Jeff Hansen  
14 actually had a note in an earlier report when talking about  
15 the Flint Water Treatment Plant to add phosphate feed here.  
16 And it never made its way into the report. And we sure as  
17 heck know that it never made its way into the plant until  
18 after Flint had already switched back to DWSD at the end of  
19 2015 and early 2016.

20 Jeff Hansen:

21 "Q. Okay, but in any event, there's no question in  
22 your mind that in 2011, the note said, 'add phosphate feed,'  
23 was your handwriting?

24 A. That looked to be my handwriting."

25 The third thing that Richard Humann came and said

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1       that LAN needed to do based on the standard of care, warn the  
2       city that because they were not feeding orthophosphates into  
3       the water, lead could leach to the water.

4               And they brought you -- I didn't have a photo of him,  
5       but he came yesterday. We saw Brian Ramaley. We all remember  
6       what he looked like. He's the final witness in Story 2.

7               When asked by my partner, Mr. Maimon, "And there in  
8       the summer" -- sorry. Mr. Maimon didn't ask him this  
9       question.

10              When asked by David Kent, lawyers for LAN, "Was there  
11       any basis for assuming that orthophosphates were required for  
12       the operation of the plant in April 2014?"

13              He said, "No."

14              Mr. Humann says, "Warn the city that because they  
15       were not feeding orthophosphates into the water, lead could  
16       leach into the water."

17              And the expert they brought to talk to you about that  
18       said there was no basis for adding orthophosphates or assuming  
19       they were necessary.

20              So if, and you should believe Mr. Humann, you know  
21       that they failed in this regard. It went on.

22              "Q. Was there any basis for LAN to conclude or for  
23       any reasonable engineer to conclude that orthophosphates would  
24       be required?"

25              And again, he said, "No."

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1           And I submit to you, I submit to you when you get to  
2       Question 1 on your verdict form, you ask yourself: Is  
3       softening corrosion control? Is corrosion control softening?  
4       Has LAN acted with the honesty and the integrity and in the  
5       best interest of the health, welfare of the general public?

6           The answer to this question is: Did defendant LAN  
7       breach the standard of care for a professional engineer?

8           And the answer is: Heck yes.

9           And when the defendants get up here, they are going  
10      to bang on Mr. Humann. I promise you. Wait for it. They're  
11      going to tell you he's an awful expert. They're going to say,  
12      "He didn't review nearly as many depositions as he should  
13      have. He didn't look at all the emails. He didn't watch the  
14      trial for 400 hours or 200 hours or 150 hours. He just didn't  
15      do enough work to be right."

16           Sometimes it's as easy as Miguel Del Toral said it  
17      was. Sometimes 2 plus 2 does equal 4. You've got lead  
18      infrastructure. You've got no corrosion control. You've got  
19      a problem. And it cannot be overstated. It cannot be stated  
20      enough when it comes to this trial that the word "crisis" just  
21      means different things, depending on whether you're reading  
22      Story 1 or Story 2 or the pivot chapter from Story 2, the  
23      choose-your-own-adventure chapter.

24           In Story 1, the true story, the Flint Water Crisis  
25      was systemwide and affected Aundrea, Riley, Emir, and

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1 Daylaana.

2 In the main section of Story 2, the damage control  
3 story, the Flint Water Crisis was a tragic event that affected  
4 the residents of Flint, but it just wasn't their fault. The  
5 Story 2 pivot chapter, part of the choose-your-own-adventure  
6 part of Story 2, the Flint Water Crisis was a bad thing that  
7 affected some people but certainly not Aundreya, Riley, Emir,  
8 or Daylaana.

9 In Story 1, the true story, the Flint Water Crisis is  
10 something that actually affected all four of these kids in a  
11 profound way.

12 Story 1, the true story, is about very high bone lead  
13 levels. Dr. Specht told you that these four children have  
14 significant levels of lead in their bones. Dr. Bithoney told  
15 you that these children have thousands, thousands of  
16 micrograms of lead in their bones. And when it comes to  
17 Dr. Specht, the best these defendants can do is criticize him,  
18 because they say his technology is too new.

19 Why is measuring lead in a child's bones so  
20 important? Dr. Specht explained in great detail why this is  
21 so. Number 1, he says blood lead levels linked to turnover of  
22 red blood cells. That means that the cells are changing  
23 nonstop, and it's hard to measure the lead in the blood.

24 He talked about how for adults, the half-life of lead  
25 is about 30 days but that studies have shown for kids, the



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1 half-life can be as short as a week. This means that in order  
2 to get accurate representative levels, blood tests would need  
3 to be done to get the right result in realtime at the exact  
4 time or as close to the exact time as the exposure.

5 In bones, the half-life is 10 to 30 years. When the  
6 lead leaves the blood, it is stored in the bones. And so  
7 there's not as much variability. It's not even close to the  
8 amount of variability when you measure lead in bones as when  
9 you measure it in blood.

10 These defendants are critical of Dr. Specht not  
11 because he's wrong. Not because they presented you any  
12 evidence whatsoever, not even an ounce that his measurements  
13 are off or that these kids didn't have thousands of micrograms  
14 of lead in their bones. Ask yourself who testified for these  
15 defendants that Dr. Specht is wrong. Again, you'd be the  
16 first eight people in this courtroom that can tell us.

17 They're critical, because it's unavailable, because  
18 it's too new. Dr. Specht, who has dedicated his life and his  
19 professional career to science, to perfecting new ways to  
20 measure old problems, VNA and LAN water engineering companies  
21 apparently don't believe that much in science when it comes to  
22 Aundreya, Riley, Emir, and Daylaana.

23 In Story 1, science is good. It's important, it's  
24 responsible. In Story 2, science is the bogeyman. It's bad.  
25 If all of us lived in Story 2, we may never have CT scans or

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1 sonograms.

2 Two water engineering companies whose businesses rely  
3 on technology and science and innovation, in this case when it  
4 comes to Dr. Specht and the pXRF machine, it's bad. It's bad  
5 because it doesn't serve their purposes. And yet not a single  
6 witness took the stand live or by video or in any documents  
7 and told you that Dr. Specht was wrong. Not one person got up  
8 here and told you that these kids didn't have that lead in  
9 their bones.

10 That evidence which we presented is uncontroverted.  
11 You have experts that say, "Yes, there was a violation of the  
12 standard of care."

13 "No, there wasn't a violation of the standard of  
14 care."

15 But here you have an expert that says there were  
16 thousands of micrograms of lead in their bones. And on this  
17 side, you've got nothing, except that it's new technology.

18 But it's not just Dr. Specht who says that this is a  
19 good way to measure. We looked at the ATSDR. It's a  
20 mouthful. The Agency For Toxic Substances and Disease  
21 Registry. Let's see what they say about the bone scan.

22 Quote, "The development of noninvasive XRF techniques  
23 for measuring lead concentrations in bone has enabled the  
24 exploration of bone lead as a biomarker of lead exposure in  
25 children and in adults. Lead in bone is considered a

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1       biomarker of cumulative exposure to lead."

2               There's nowhere in the ATSDR that says, "Don't do  
3       this, can't do it, not a good idea." In fact, they endorse  
4       it. Regardless of what VNA and LAN want you to believe when  
5       it comes to Dr. Specht, regardless of whether you're reading  
6       from the main sections of Story 2 or the pivot sections from  
7       Story 2, this is a story of high lead levels in these kids's  
8       bones.

9               It's a story of acquired brain injury. It's a story  
10       of cognitive deficits. At its core, it's a story of lost  
11       potential.

12              When Mr. Maimon gets up here and talks to you about  
13       damages, he's going to go into great detail about Dr. Krishnan  
14       and her work with these kids. But I want to touch on it for a  
15       minute. We brought you Dr. Mira Krishnan, the defendants  
16       brought you Dr. David Thompson.

17              Dr. Krishnan, who has extensive clinical experience  
18       in neuropsychology, a doctor who spent hours upon days  
19       performing tests of these kids, interviewing their parents,  
20       looking at their medical records, looking at their school  
21       records, watching them while they were being tested by her  
22       live in realtime for hours in Flint.

23              She interviewed their families. She read the  
24       depositions of their moms. She did a thorough and complete  
25       assessment of them. Dr. Krishnan who, when it comes to these

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1 kids of all the experts who have testified in this case, were  
2 actually the only expert who heard their voices, who looked  
3 them in the eyes.

4 Dr. Thompson, who was paid 80 grand by VNA to come  
5 here to tell you that as part of the Pivot 2 chapter story  
6 choose-your-own-adventure, none of them were her.

7 Dr. Thompson who for 80 grand, as he put it, looked at  
8 records, read Krishnan's reports, read some articles, and met  
9 with lawyers.

10 Dr. Thompson, who in case you blame VNA and LAN for  
11 anything at all, was willing to come here and tell you that  
12 there was absolutely nothing wrong with any one of these four  
13 kids, so it just doesn't matter what LAN or VNA did wrong.

14 Dr. Thompson who at the time he sat in that chair,  
15 had never met a single one of them, who at the time he sat in  
16 that chair, had never spoken to a single one of their parents  
17 or any members of their families, Dr. Thompson who after every  
18 witness that testified referred to what happened in Flint as a  
19 crisis, Dr. Thompson came here and told you with a straight  
20 face that it was not a crisis, not for these four kids.

21 Four kids who by all accounts have never met each  
22 other. Four kids who by all accounts are just random kids  
23 that live in the same city. These are the four kids who  
24 weren't hurt in what has been referred to throughout this  
25 trial as the Flint Water Crisis.

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1           So here's what Dr. Krishnan did. She evaluated each  
2 of them for cognitive and emotional impacts of lead exposure.  
3 She did interviews with their families and with the kids. She  
4 does neuropsychological testing. She reviewed their medical  
5 and school records. She reviewed the deposition testimony.

6           And when it came to Aundreya -- and Mr. Maimon will  
7 talk more about this -- she found that Aundreya suffered an  
8 acquired brain injury. And she found that the result of that  
9 brain injury, the deficits that she experiences are  
10 disinhibition, impulsivity, problems focusing, relative  
11 weakness in mathematics, weakness in verbal reasoning, social  
12 and mood problems, greater difficulty completing high school,  
13 college, or an advanced degree.

14           When it came to Riley Vanderhagen, also acquired  
15 brain injury with neurocognitive deficits that present as a  
16 history of learning problems, strong proactive interference,  
17 weakness in emotional self-regulation, deficits in visual  
18 reasoning, deficits in problem-solving flexibility, greater  
19 difficulty completing high school, college, or an advanced  
20 education.

21           When it came to Emir Sherrod, hyperactivity and  
22 difficulty playing quietly, impulsivity, poor focus, executive  
23 deficits, greater difficulty completing high school, college,  
24 or an advanced degree. All the result of his acquired brain  
25 injury.

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1 Daylaana Ware, acquired brain injury. Problems  
2 focusing and inattention, oppositionality, impulsivity,  
3 deficits in visual reading, greater difficulty completing  
4 college, high school, or an advanced degree.

5 And if for some reason, VNA felt like you didn't  
6 believe Dr. Thompson, they brought you Dr. Gaitanis.  
7 Dr. Gaitanis, who was paid \$600 an hour and sit in that chair  
8 and read for you chapter and verse from Story 2.  
9 Dr. Gaitanis, who like Dr. Thompson, did nothing more than  
10 look at some records, nothing more than read Dr. Krishnan's  
11 reports, cherry-pick parts of cherry-picked articles to try  
12 and support his opinion.

13 Dr. Gaitanis who all he did were those things and met  
14 with lawyers. All in an effort for you to believe that what  
15 was or wasn't in VNA's report just didn't matter. Because  
16 like Dr. Thompson said, these kids weren't hurt. You heard  
17 Dr. Gaitanis consistently on cross-examination from Mr. Maimon  
18 refer to the "real world." Those were his words over and over  
19 and over again.

20 In the real world this. In the real world that. As  
21 if we were living in some other world with our clients that  
22 folks like Dr. Gaitanis do not live in. Dr. Gaitanis, who in  
23 case you blame VNA and LAN for anything, was willing to come  
24 in and tell you that the kids weren't hurt. Dr. Gaitanis, who  
25 like Dr. Thompson, had never met a single one of them.

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1 Dr. Gaitanis, who like Dr. Thompson, never spoke to a single  
2 member of their families.

3 Because in the real world, in the real world, if a  
4 kid has a problem and I'm asked a question and I'm  
5 Dr. Gaitanis, I don't evaluate that kid. I don't meet that  
6 kid. I don't talk to his parents.

7 Dr. Gaitanis, who in 25 years has worked with ten  
8 lead poisoned kids. Because in his real world, in that real  
9 world, you can be an expert on lead poisoning, even if you  
10 only see ten kids over a quarter of a century.

11 Dr. Gaitanis, who isn't even the person at his own  
12 institution that someone would call if they had an issue with  
13 lead poisoning, because in his real world, in that real world,  
14 you don't need to be the person at your institution that  
15 somebody calls to be an expert on lead poisoning.

16 Dr. Gaitanis, who's never taught a single class on  
17 lead poisoning. Dr. Gaitanis, who's never published an  
18 article on lead poisoning. Dr. Gaitanis, who over and over  
19 and over again referred to this "real world" was referring  
20 repeatedly to the real world that exists in Story 2. And if  
21 you believe him and you believe Dr. Thompson, then perhaps VNA  
22 and LAN did nothing wrong.

23 Now, let's talk about causation in Story 1. And I'm  
24 almost done. We're back to a jury instruction. So thank you  
25 for your patience.

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1            "If you find that either defendant committed  
2 professional negligence and a plaintiff suffered an injury,  
3 you must next determine whether that defendant's professional  
4 negligence was a proximate cause of the plaintiff's injury."

5            The words "proximate cause" mean first that the  
6 negligent conduct must have been a cause in fact of the  
7 plaintiff's injury. And second, that the plaintiff's injury  
8 must have been the type that is a natural and probable result  
9 of the negligent conduct.

10           There may be more than one proximate cause of  
11 plaintiff's injury. We've already talked about this slide,  
12 and this is the one that talks about the relatively small  
13 percentage of fault in the last line. But it goes with the  
14 previous slide, and so I put it there for you a second time.

15           And finally, "Plaintiffs may still satisfy their  
16 burden of proof on causation, even if defendants's negligence  
17 was not the last or only cause of their injuries. Plaintiffs  
18 may also satisfy their burden of proof if defendants's  
19 negligence acted in combination with some other causes or at  
20 the same time as some other causes."

21           Finally, causation -- I say "finally" -- I may have  
22 another slide.

23           Causation by multiple actors. You may decide that  
24 the conduct of neither, one, or both of the defendants was a  
25 proximate cause of plaintiffs' injuries. If you decide that



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1 one of the defendants was professionally negligent and that  
2 such negligence was a proximate cause of plaintiff's injuries,  
3 it is not a defense that the conduct of the other defendant or  
4 other persons or entities also may have been a cause of his or  
5 her injuries.

6 Meaning that there could be a lot of pieces. It's a  
7 puzzle. You must give each defendant separate consideration  
8 as to whether its conduct was a proximate cause of each of the  
9 plaintiff's injuries.

10 I lied. To find that VNA's breach of the standard of  
11 care -- I didn't lie. I just was mistaken. I apologize.

12 "To find that VNA's breach of the standard of care  
13 was a substantial factor of a plaintiff's injury, you must  
14 find that the plaintiff has established by a preponderance of  
15 the evidence." Again, that scale.

16 If VNA had not breached its standard of care -- in  
17 other words, if VNA had done what Richard Humann says it  
18 needed to do, the city would have started using  
19 orthophosphates or returned to Detroit water at some point  
20 between February 10, 2015, when they first got to Flint, and  
21 October 16, 2015, when Flint switched back to the DWSD. And  
22 that doing so would have lowered the lead level in water the  
23 plaintiff may have consumed.

24 2, "The plaintiff consumed enough lead from water  
25 after that date to have caused or made worse his or her injury

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1 or caused a separate or additional injury. Remember that. I  
2 underlined it. We're going to hear what Dr. Bithoney said in  
3 a minute. A separate or additional injury."

4 And, 3, "The lead from water consumed after that date  
5 and not some other source caused or made worse plaintiff's  
6 injury."

7 Finally, as the LAN, it's the same instruction except  
8 with some tweaks. 1, "If LAN had not breached the standard of  
9 care, the city would have applied a sufficient amount of  
10 orthophosphate corrosion control inhibitor chemicals to avoid  
11 excessive levels in the Flint River water or would not have  
12 operated the Flint Water Treatment Plant without the use of an  
13 orthophosphate corrosion inhibitor."

14 That's the standard that Richard Humann testified  
15 about. That's what he said they needed to do.

16 2, same as the last one, but with different dates.  
17 "The plaintiff consumed enough lead from Flint water after  
18 April 2014 to have caused or made worse his or her injury or  
19 caused a separate or additional injury."

20 And finally, 3, "The lead from Flint water consumed  
21 after April 2014 and not some other source caused plaintiff's  
22 injury."

23 Y'all remember Dr. Bithoney. He came over the course  
24 of three weeks, I think. The first time he came, he was a  
25 little harder to hear. And the second time he came, he wore

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1 his microphone.

2 Dr. Bithoney has spent the last four decades of his  
3 life and career meeting with, treating, evaluating, and  
4 working with lead poisoned kids. Dr. Bithoney has written  
5 quite a number of peer-review articles on lead poisoning.

6 Dr. Bithoney told you that he, too, believes what  
7 Dr. Krishnan said about these kids, that they suffered from  
8 acquired brain injuries and that the deficits that she found  
9 in them are true and exist.

10 Dr. Bithoney first spoke to us generally about lead's  
11 toxic effect on kids, on their brains. Dr. Bithoney explained  
12 the types of deficits that kids who are lead poisoned  
13 generally suffer. Executive function deficits, decreased  
14 academic achievement, decrements in overall intelligence,  
15 reduced attention hyperactivity, adverse behavioral effects.

16 Dr. Bithoney also explained that the earlier in life  
17 that a kid is exposed to lead, the worse it's going to be for  
18 that kid over time.

19 The younger the child, the less the brain is formed,  
20 the more damage that will occur if that child is lead  
21 poisoned.

22 Dr. Bithoney explained that lead is -- I'm sorry.

23 Dr. Bithoney explained that lead is exquisitely  
24 poisonous to kids. Exquisitely poisonous to kids. It means  
25 it affects kids in ways it doesn't affect anybody else. And

1 then he explained that there is no known toxicity threshold  
2 for lead.

3 His testimony when it came to each of these  
4 organizations was that all of these prestigious organizations  
5 had jumped in and said, "There's no level of lead that's known  
6 that does not cause damage to kids."

7 Dr. Bithoney explained the extensive and thorough  
8 work that he did in making his evaluations and coming to his  
9 conclusions in trying to find what caused Aundreya's and  
10 Riley's and Emir's and Daylaana's deficits in their brain  
11 injury. He talked about his differential diagnosis. He  
12 interviewed parents. He reviewed Dr. Krishnan's reports. He  
13 inspected the kids's medical and school records. He examined  
14 blood and bone results. He reviewed publications,  
15 periodicals. And then he conducted block by block geomapping.

16 He relied on the Pieper study, which showed  
17 systemwide water contamination. A study that has been  
18 referenced over and over and over again during this trial,  
19 which some folks have ignored, and some folks have relied  
20 upon.

21 In his geomapping, he found -- first off, his  
22 geomapping is something that's very rarely if ever done. He  
23 says this is never done in a standard lead poisoning clinic.  
24 But because this issue is so very important, we spent hours  
25 looking for alternative causes of lead poisoning. Why did

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1 these kids have so much lead in their bodies? So we went, and  
2 we mapped and placed them on a grid, each child's home  
3 location. We also mapped their past residences, where else  
4 they lived in the past.

5 He talked to us about zip codes, 48503 through 48507,  
6 right out of the Pieper article. Zip codes, which had some of  
7 the highest levels of lead in water in the entire City of  
8 Flint. And each of these addresses Cherokee Ave., South Dort,  
9 Lincoln Avenue, Franklin Avenue, Woodrow Ave, Yale Street,  
10 East Boulevard Drive, West Sherman Avenue, Father Dukette,  
11 Addison Street. These are where our clients -- this is where  
12 Aundrea, Riley, Emir, and Daylaana lived and spent the  
13 majority of their time.

14 Dr. Bithoney told us how he tried to find something  
15 else. But he said, "I couldn't find anything else." And we  
16 have a saying probably in all the academic fields. When you  
17 hear hoofbeats, don't think of zebras. Think of horses. So  
18 we had a cause. We could not find any other cause of lead  
19 elevation in their bones.

20 And yet I had kids with thousands of micrograms in  
21 their bones. So I had to explain it. And the only source of  
22 lead that I'd found, the kids were exposed to was traveling  
23 all over the city in multiple zip codes to multiple family  
24 members, friends, relatives, parks, water fountains at the  
25 park, etcetera. So -- and those were known to have lead.

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1           And he said there was nothing else. There's so much  
2           lead in these kids' bodies, we couldn't find any other reason  
3           for it.

4           "And when you described exposure to water from the  
5           Flint River, are you including in your opinion to a reasonable  
6           degree of medical certainty the years 2014 and 2015?"

7           And he said, "Yes. Because you couldn't get those  
8           high levels of lead in your bones unless there was chronic  
9           exposure. Yes, because you have to have systemwide chronic  
10          persistent relatively high level of exposures in order to add  
11          up to thousands of micrograms.

12          "I can't understand any other cause for it, and I've  
13          spent hours trying to explain this before I wrote my report.  
14          I'm sure, because I was really persistent trying to look for  
15          another cause."

16          Dr. Bithoney also testified over and over and over  
17          again the second day he came in, that each exposure, that each  
18          child had, every single day time after time from the minute  
19          the crisis started until October 2015 was a separate and  
20          individual exposure.

21          When you go back and you look at the jury  
22          instructions, remember that. Each one was separate  
23          cumulative, and additional.

24          Dr. Bithoney told us that Aundrea's lead poisoning  
25          was caused by exposure to the Flint River in 2014 and 2015.

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1 He told us that Riley's lead poisoning was caused by  
2 exposure to the Flint River water in 2014 and 2015.

3 He told us that Emir's lead poisoning was caused by  
4 exposure to the Flint River water in 2014 and 2015.

5 He told us that Daylaana's lead poisoning was caused  
6 by her exposure to water from the Flint River in 2014 and  
7 2015.

8 Each exposure, separate and additional, each exposure  
9 a separate and additional injury. These were his words.

10 "Q. Did their continued exposure during 2015  
11 through" -- sorry -- "during 2015 through October 2015,  
12 separately and additionally cause them injuries?

13 A. Yes. Well, every bit of lead they ingested that  
14 was going into the bones would add more lead to the bones and  
15 also more lead to the brain."

16 Dr. Bithoney testified, "So we've said that this was  
17 systemwide exposure." You need to have chronic exposure to  
18 get to levels of 9,000 micrograms of lead in the bones. These  
19 levels are supernormal. Supernormal. That means way above  
20 normal.

21 And then for causation Story 2, there's no Story 2  
22 for causation. There's no dispute about what Dr. Bithoney  
23 said. If y'all actually believe Dr. Krishnan, if you actually  
24 believe that these kids are injured, there is no other  
25 explanation besides what Dr. Bithoney presented to you as to

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1       what caused these injuries.

2               Again, we've got experts that say there's a standard  
3       of care that was breached and a standard of care that wasn't.  
4       We've got an expert neuropsychologist who says the kids are  
5       hurt and the Story 2 pivot chapter. Those experts they  
6       they're not hurt.

7               But when it comes to Dr. Specht and his bone scans,  
8       there's no expert that says he's wrong. When it comes to  
9       Dr. Bithoney and his opinions, there's no expert that says  
10      he's wrong.

11              And on your verdict sheet when you get to Roman  
12      numeral II, you're going to be asked a question, "Was  
13      plaintiff Emir Sherrod injured?" And the answer is, "Yes."

14              "Was plaintiff Aundreya Teed injured?" And the  
15      answer is, "Yes."

16              "Was plaintiff Riley Vanderhagen injured?" And the  
17      answer is, "Yes."

18              "Was plaintiff Daylaana Ware injured?" And the  
19      answer is, "Yes."

20              And then you're going to be asked eight more  
21      questions about VNA and LAN.

22              "Was VNA's breach of the standard of care a proximate  
23      cause of Emir Sherrod's injuries?" I submit to you that the  
24      evidence is overwhelming. "Yes."

25              "Was VNA's breach of the standard of care a proximate



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1 cause of Aundrea Teed's injuries?" The evidence is  
2 overwhelming. "Yes."

3 "Was VNA's breach of the standard of care a proximate  
4 cause of Riley Vanderhagen's injuries?" I submit to you the  
5 answer is, "Yes."

6 "Was VNA's breach of the standard of care a proximate  
7 cause of Daylaana's Ware injuries?" The answer is, "Yes."

8 And when it comes to LAN, the same question. And I'm  
9 going to read it to you one more time.

10 "Was LAN's breach of the standard of care a proximate  
11 cause of Emir Sherrod's injuries?" The answer is, "Yes."

12 "Was LAN's breach a proximate cause of Aundrea  
13 Teed's injuries?"

14 "Yes."

15 "Was LAN's breach of the standard of care the  
16 proximate cause of Riley Vanderhagen's injuries?"

17 "Yes."

18 "Was LAN's breach of the standard of care a proximate  
19 cause of Daylaana Ware's injuries?" The answer is, "Yes."

20 We're all a product of our communities. Whether  
21 you're from Flint, Michigan or Ann Arbor, New York City,  
22 Atlanta, Georgia; Boston, Massachusetts; part of who we are,  
23 part of what makes us, part of the way we see the world, part  
24 of the way we see ourselves is about how we grew up.

25 It's about our communities. It's about our siblings.

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1 It's about our parents. It's about our friends. Part of who  
2 we are is about what it feels like in the dead of winter,  
3 wherever we're from. What it feels like in the midst of  
4 summer, wherever we're from.

5 In the same ways that many of us can wake up in the  
6 middle of the night and find our ways to the bathroom without  
7 ever turning on the lights, because we know it so well, the  
8 longer we stay and the more entrenched we become in our  
9 communities, the more our communities become part of who we  
10 are, and the more we become a part of what that community is.  
11 We become its fabric. And the tapestry of that fabric, the  
12 colors of that quilt, its vibrancy, its dullness, it's  
13 contrasts, its transitions, what you see when you look at the  
14 fabric is so often defined by its brightest colors. And all  
15 of our communities through all of the seasons through all of  
16 time, the brightest colors are our kids.

17 And when you go back to that jury room, you think  
18 about those four kids, and you think about all the evidence  
19 you heard, and you return a verdict for the plaintiffs.

20 Thank you.

21 THE COURT: Okay. Thank you, very much, Mr. Stern.

22 And now we'll take our break, which I think we could  
23 all use. So please rise for the jury. It will be about a  
24 15-minute break.

25 (Jury Out)

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1 THE COURT: We'll take a 15-minute break. Could  
2 everybody stay off the second and third floor? The jury's on  
3 the second floor. So just use the restroom on the first  
4 floor.

5 (Brief Recess)

6 THE COURT: Please be seated, and we'll bring the  
7 jury in.

8 MR. STEIN: Your Honor.

9 THE COURT: Yes.

10 MR. STEIN: I would just ask that after Mr. Maimon  
11 finishes, we have a short break --

12 THE COURT: Sure.

13 MR. STEIN: -- of a couple of minutes to set up our,  
14 whatever we need --

15 THE COURT: Do you want to give the jury a break to  
16 go back up to the jury room?

17 MR. STEIN: I think it would be a good idea if --

18 THE COURT: Okay.

19 MR. STEIN: Again, I think we need about ten minutes  
20 to make sure our equipment is set up and all of that.

21 THE COURT: Okay. Absolutely.

22                      Mr. Mason?

23 MR. MASON: I'm just stretching, Your Honor. It's a  
24 long day to sit all day.

25 THE COURT: It is. I'm sitting on this thing still

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1 to try to keep me off balance. Supposedly it's going to help  
2 me with my osteoporosis. So I don't believe it's helping me  
3 at all. I'm trying to follow the rules. That and I chugalug  
4 calcium pills.

5 The jury's still using the restroom. I just was  
6 following Mr. Mason's lead. Thought it would be good to stand  
7 up. We do have a Zumba instructor on our jury. And the whole  
8 time I've been thinking maybe she can lead us in a couple of  
9 moves together. But then our electrician wasn't allowed to  
10 help us get the electricity on, so. He did offer for a small  
11 sum.

12 THE CLERK: All rise for the jury.

13 (Jury In)

14 THE COURT: Welcome back. Welcome back to all of the  
15 members of the jury.

16 Please be seated. And what we'll do now is I think I  
17 mentioned this earlier, Mr. Maimon will continue with  
18 plaintiffs' closing argument. And after that, we'll take --  
19 it will be shorter than the portion that Mr. Stern did.

20 After that, we'll take another break and then  
21 Mr. Stein will get his equipment and materials ready and  
22 deliver the closing argument for VNA.

23 MR. MAIMON: May I, Your Honor?

24 THE COURT: Yes, you may.

25 MR. MAIMON: Thank you, Your Honor. And may it

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1 please the Court, members of the jury, I'd like to start by  
2 talking about one of the major responsibilities that you're  
3 going to have.

4 In our system of justice, in our practices, you're  
5 going to be given a very long form to fill out. I'm hopeful  
6 that it's on double-sided paper so we can save some of the  
7 trees. But this is your verdict. You filling this out is  
8 your verdict.

9 And the judge talks about verdicts, and we talk about  
10 verdicts. And it always struck me what does the word  
11 "verdict" mean?

12 (Stenographer clarification.)

13 MR. MAIMON: It's made up of two parts. To "verify"  
14 means to make sure that something is true. And to "dictate"  
15 means to speak. And so what a verdict is you speaking the  
16 truth.

17 And in our system of justice that was set up hundreds  
18 of years ago, the only people that speak the truth are the  
19 members of the community, the citizens, the people. We have a  
20 system that empowers the people to sit as the third branch of  
21 government.

22 We stand for Judge Levy when she comes into the  
23 courtroom, because she's the judge of the law. And we've all  
24 taken an oath to uphold the law. And you did that when you  
25 swore your oath as jurors. But we stand when you come into

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1 the room, because you and only you are the judges of the  
2 facts.

3 And in our system, if you listen to the judge's  
4 instructions, you'll hear the values that we have as a  
5 society. Of reasonableness, of care. And we don't trust the  
6 application of those values and those laws to anyone but our  
7 citizens.

8 And so you are going to be asked after you answer the  
9 questions that Mr. Stern talked about, to answer the questions  
10 about the damages that have been caused to these four kids.  
11 And I'd like to talk to you about those.

12 The judge will tell you that if you decide that a  
13 plaintiff is entitled to damages, it's your duty to determine  
14 the amount of money that reasonably, fairly, and adequately  
15 compensates him or her for each elements of those damages.

16 We're going to talk about those elements. The amount  
17 of money for certain of these damages, and we'll talk about  
18 them, cannot be proved in precise dollar amounts. When we're  
19 going to be talking about the mental anguish that these kids  
20 have experienced, that they will experience, the  
21 embarrassment, the humiliation, the loss of enjoyment of  
22 life's pleasures, those are not things that there's a table  
23 that's going to be given to you to say look how hold they are,  
24 look how long it's lasted, and here's the right amount.

25 It's not like an economist can come -- and when

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1 Dr. Crakes took the stand, he told you he did not evaluate  
2 them. We trust those to our citizens. We trust the  
3 evaluation of those things as Judge Levy said, "because the  
4 law knows no better standard than our people."

5 And so you're going to be asked if you find -- and  
6 I'm not going to go through this for each one of the kids,  
7 because that will take too long.

8 But if you find that Emir or Aundreya or Daylaana or  
9 Riley sustained damages of mental anguish, denial of social  
10 pleasure and enjoyment, embarrassment, humiliation up until  
11 today, up until the time that you tell the Court that you have  
12 reached a verdict, you're going to give a dollar amount for  
13 that.

14 And we'll talk about how we can think about those  
15 types of things. And then separate and apart from that,  
16 you're going to be called upon to talk about the disability,  
17 the loss or impairment of neurocognitive function and why  
18 that's so important to think about, especially when we're  
19 talking about kids.

20 And from the time that they experience their first  
21 symptoms until the time that you render a verdict, you're  
22 going to be asked to put a dollar amount on that.

23 You're also going to be asked and tasked -- and it's  
24 an awesome responsibility -- to look into the future for these  
25 kids.

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1           If you find that it's reasonably certain that Emir is  
2 going to suffer from these neurocognitive deficits, the loss  
3 of enjoyment of life's pleasures, the mental anguish, the  
4 embarrassment, the humiliation into the future, you're going  
5 to be given a chart, and you are going to be tasked to fill it  
6 in year by year by year for the time that you believe that  
7 each of these kids are going to suffer.

8           And the same thing is true with the disability, the  
9 loss or impairment of neurocognitive function. And we'll talk  
10 about how the evidence has shown us that that changes over  
11 time and becomes more pronounced and has a more profound  
12 effect and will have a more profound effect on these kids as  
13 they get older.

14           You'll be asked about economic losses, loss of  
15 earning capacity. We had Dr. Crakes, the only economist to  
16 testify in this case, come and talk to us about that. And,  
17 again, you'll be given a chart starting at age 18 for each of  
18 the kids and going through the period until age 67, which is  
19 the work life expectancy that was provided by Dr. Crakes from  
20 the tables for each year.

21           And one of the things that's going to be absolutely  
22 crucial for you in order for you to give a fair and adequate  
23 amount of money to each of these kids is to listen to the  
24 judge's instruction that when you award damages for what's  
25 going to happen in the future, you have to do it in



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1       undiscounted money. What the money, what the salary is going  
2       to be in 2057. What's the worth of a dollar then.

3               And Dr. Crakes explained to us that money in the  
4       future, if you want to put it in present value, is much less.  
5       You're not going to discount to future -- to present value,  
6       because you're sworn an oath to award in future dollars and  
7       not to reduce or discount to present value.

8               And that's so important if you're going to keep your  
9       oaths to fairly and adequately compensate these kids.

10              So let's talk a little bit about something that's  
11       going to come before -- that's in the jury form after damages.  
12       I'm going to reach damages in a minute. But I'd like to talk  
13       to you about what Corey talked about as the burden that the  
14       defendants have when it comes to other people who they claim  
15       are responsible.

16              And there will be nine entries, nine lines on the  
17       verdict form for the people that they blame for the Flint  
18       Water Crisis and the injuries that these children have  
19       suffered.

20              The defendants bear the burden of proof. They had to  
21       come forward in the same way that we did to prove their claims  
22       against these entities and these individuals. You should  
23       consider, I believe, that they failed to call a single expert  
24       witness to talk about any of these. Just absolutely failed.

25              And they have to show not only that somebody acted

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1       unreasonably under the circumstances so that they breached  
2       their duty of care, but they have to show that that breach of  
3       a duty of care proximately caused injury to each of these  
4       kids.

5               And so let's talk about the people and the entities  
6       that the defendants seek to blame here. There's former  
7       Governor Richard Snyder. Unlike anybody from the defendants,  
8       certainly unlike William Fahey, who got up and said we did  
9       absolutely nothing wrong. Robert Nicholas, David Gadis.

10              Governor Snyder accepted responsibility, because it's  
11       the right thing to do. He's the chief -- he was the chief  
12       executive of the state. He understands that that comes with  
13       responsibility. And he accepted his responsibility for the  
14       state's role in the Flint Water Crisis. What does that have  
15       to do with Daylaana, Emir, Riley, and Aundreya particularly?  
16       We'll see. But at least he had the honesty and the integrity,  
17       no matter what your politics, to accept responsibility.

18              Gerald Ambrose, as Corey mentioned, this claim is not  
19       against the emergency manager's office. We'll talk about  
20       where the claims against the emergency manager's office lie.  
21       But this is against Mr. Gerald Ambrose. And what did Gerald  
22       Ambrose do that was so wrong?

23              He relied on VNA. He was at the public meeting where  
24       VNA, based on Marvin Gnagy's mistake, stood up and told the  
25       people time and again, "Your water is safe." And all he said

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1 was "If the water is safe, I cannot responsibly say we're  
2 going back to Detroit and pay \$12 million for the year. I  
3 can't do it."

4 That's what Gerald Ambrose did wrong here. He relied  
5 on VNA.

6 Darnell Earley, he testified that he relied on LAN.  
7 LAN was the consultant engineer when he was the emergency  
8 manager, and he relied on them to design the plant the way it  
9 should be designed. He didn't know anything about it. If  
10 Darnell Earley is personally at fault, it's because he relied  
11 on the people at LAN.

12 Ed Kurtz, all he did was he hired LAN. He was the  
13 emergency manager in June of 2013, which we went over  
14 yesterday with Mr. Ramaley, at a time when LAN for every  
15 important or crucial thing didn't put it into their reports or  
16 their proposals.

17 If pH and alkalinity were so important, they weren't  
18 important enough to put in the proposal, the contract, or the  
19 change order. If a 60- to 90-day test run was so crucial as  
20 Mr. Ramaley wanted us to believe, it wasn't important enough  
21 to make it into a single document. But that's what Darnell  
22 Earley -- that's what Darnell Earley relied on.

23 And Ed Kurtz, he was out of the picture after signing  
24 the contract to bring in LAN. If he's responsible, it's  
25 because he hired LAN.

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1           The State of Michigan. The State of Michigan has  
2 different departments in it as we've learned. Mr. Muchmore  
3 talked about that. Governor Snyder talked about that. The  
4 MDEQ, we've heard a lot about them. The Department of the  
5 Treasury, we've heard a little bit about them. The Health and  
6 Human Services Department, we've heard virtually nothing  
7 about.

8           And yet the defendants seek to lay blame at the foot  
9 of the MDHHS. They seek to lay blame without any evidence  
10 that the treasury department did something wrong.

11           Now, it's true, the emergency managers reported to  
12 the treasury who reported to the governor. But what did  
13 anyone at the treasury department do to harm any of these  
14 kids? It might be that if you throw enough spaghetti at the  
15 wall, something sticks. But that's not our system of justice.

16           When we took our oaths, lawyers, judges, we swear to  
17 uphold the law. When you took your oath, you swore to truly  
18 judge this case according to the law and the evidence. And  
19 spaghetti is not evidence.

20           The MDEQ, they did make a mistake. Their  
21 interpretation of the lead and copper was wrong. It was a  
22 violation of the Lead and Copper Rule to open up this plant  
23 without corrosion control and without a corrosion-control  
24 study.

25           And that's the basis of their claim against the MDEQ.

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1 But their own expert yesterday, Mr. Ramaley, refused to agree.  
2 He says, "I don't agree that it was a violation of the LCR."  
3 I'm here to tell you even though it's not in the interest of  
4 my client, Mr. Ramaley was wrong. The MDEQ was wrong.

5 They admitted they were wrong in August of 2015 when  
6 they wrote to the city and said, "Put in a corrosion-control  
7 study, and you've got less than six months to do it. Because  
8 we were wrong. We made the mistake in how we interpreted the  
9 Lead and Copper Rule."

10 But I guess Mr. Ramaley thought that he's here for  
11 LAN. And if I'm asking a question, it's not really good to  
12 agree so much. Just the way he wouldn't agree with  
13 Mr. Del Toral from the EPA who actually wrote the regulations  
14 for the LCR.

15 And so we believe that the MDEQ bears a share of  
16 responsibility. And therefore, the State of Michigan of which  
17 it's the department for on that line, there should be a share  
18 of responsibility.

19 The U.S. EPA, we heard from two witnesses of the EPA,  
20 Jennifer Crooks, who there's a document in evidence. I'm  
21 sorry. I didn't have it. I just thought of it. She says,  
22 "We've got to work -- let's put aside our differences with  
23 MDEQ. We see it one way. They see it another. We've got to  
24 put aside our differences and work to help the people of  
25 Flint. That's what we have to do."

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1           That's what she's to blame for?

2           Mr. Del Toral came in February, stayed in March,  
3 April, wrote his report, went out on sick leave, came back.  
4 His actions are what we should blame the EPA for?

5           We'll talk about the EPA in a minute.

6           Dayne Walling, again, this is a claim not  
7 Mayor Walling. Because the judge is going to instruct you  
8 that if you find any fault for Mr. Ambrose, Mr. Kurtz, or  
9 Mr. Earley as the emergency managers, that's fault that lies  
10 under the City of Flint.

11           Similarly, if you find that Mayor Walling has  
12 responsibility as the mayor, not as Dayne Walling, that's  
13 fault that's assigned under the City of Flint.

14           But what did Mayor Walling do? He called the EPA.  
15 "You've got to get here. You've got to send us somebody right  
16 away." He wrote Governor Snyder. "You've got to help us. We  
17 need money. We need help." He wrote to President Obama. But  
18 he's responsible for the brain damage caused to these four  
19 kids.

20           The City of Flint, if you find that any one of these  
21 four, Mr. Ambrose, Mr. Earley, Mr. Kurtz, or Mayor Walling in  
22 their official capacities breached their duty of care, that  
23 falls under the City of Flint.

24           And then finally Rowe Engineering. We brought an  
25 expert to explain exactly where Rowe Engineering breached the

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1 standard of care. We showed you the contracts that each LAN  
2 and VNA had with the City of Flint. We got their expert,  
3 their own expert to admit that lead and corrosion was within  
4 the scope of VNA's responsibilities to the state. And the  
5 city.

6 Where was the expert to talk about what did Rowe do  
7 wrong as a professional engineer? Because the question with  
8 Rowe is going to be the same as the question with LAN and VNA.

9 Did they breach the standard of care for a  
10 professional engineer, and did that breach of the standard of  
11 care for a professional engineer proximately cause these  
12 injuries? And all we knew about Rowe is that sometimes -- and  
13 pay attention to the evidence -- sometimes they acted as the  
14 city engineer.

15 They weren't hired as the city engineer to look at  
16 everything. And the evidence was for Mr. Glasgow, Mr. Croft,  
17 that when it came to the design and the implementation of the  
18 design for the Flint Water Treatment Plant, it was LAN, not  
19 Rowe.

20 And so let's talk a minute about the EPA. Yesterday  
21 at the close of evidence, at the crescendo of Story number 2,  
22 we heard and saw a report by the EPA. What the United States  
23 Environmental Protection Agency did is what responsible people  
24 do. We hope that our government acts like this. We hope that  
25 after a crisis like the Flint Water Crisis, they can sit down,

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1 and they can say, "Let's reflect. Let's be honest. Let's  
2 have integrity. And let's admit we could have done better."

3 And that's what they did. That's what the EPA did.  
4 And this is the basis of the claims by LAN and VNA. But  
5 there's one problem. It's an inconvenient problem for these  
6 defendants. It's called the law.

7 Judge Levy instructed you yesterday and will give you  
8 the instructions that in determining whether a defendant or a  
9 nonparty breached its duty, you may not view that defendant's  
10 or nonparties' actions through the lens of hindsight. You  
11 can't say, "Oh, now we're sitting here in 2022, and in  
12 hindsight, it didn't work out."

13 You have to say with what they knew and what they did  
14 in realtime at the time was it reasonable. So let's look at  
15 what the EPA did in realtime. What did they do? VNA actually  
16 told us. Because they entered into evidence yesterday  
17 Plaintiffs' Exhibit 1602, which was a January 21, 2016, fresh  
18 off the switch back to Detroit, this administrative order by  
19 the EPA, and they detailed what they had done.

20 April 24. This is almost two months now when Miguel  
21 Del Toral is there on behalf of the EPA working with LeeAnne  
22 Walters, testing her water, thinking at first that it was a  
23 one-off, and then finally realizing that this is a systemwide  
24 problem. Something that these defendants pretend they could  
25 never have figured out.



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1           He needed two things to know it. Lead pipes. No  
2 corrosion control.

3           And when Miguel Del Toral says, "No corrosion  
4 control," he didn't say, "No corrosion control. Oh, except  
5 for that water softening." In realtime, no one considered  
6 that. That's Story number 2.

7           April 24, they're notified by the MDEQ. May and  
8 June, they're expressing concern. They're working the  
9 problem. They're sending their people to work at  
10 Mayor Walling's request to be part of the advisory committee,  
11 the Technical Advisory Committee.

12           June 21, they discuss with the MDEQ the city's lead  
13 drinking water. Miguel Del Toral issues his preliminary  
14 report. August -- I mean, July -- June was the report. July,  
15 August.

16           August 31, they had a call with MDEQ to discuss  
17 outreach to the citizens to reduce exposure. This is Jennifer  
18 Crooks saying, "Let's put aside our differences. We don't  
19 agree, but we've got to work for the health and welfare and  
20 safety of the citizens of Flint."

21           September 3, Mayor Walling invited the EPA to get  
22 involved. Help us. September 27, Susan Headman calls the  
23 MDEQ director Dan Wyant. October 7, the Technical Advisory  
24 Committee with the EPA says, "Go back to Detroit."

25           And on the 16th, less than two weeks later, it's

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1 done. Something VNA says could never have been done with no  
2 information greater than what VNA knew in February. That's  
3 when they switched back October 16.

4 April 24, after Del Toral's there for two months.  
5 May, June, July, August, September, October. That's what the  
6 EPA did in realtime. And if you follow the law and apply the  
7 instructions of Judge Levy, you can't say, "Oh, we looked at  
8 it a year later. And you know what? We want to do better.  
9 We want to do better for the citizens of this country to make  
10 sure they have safe drinking water, and so we could have done  
11 better then."

12 We do not believe that the defendants have carried  
13 their burden of proof with regard to the EPA. We believe  
14 there is evidence. As Corey said when he stood up in front of  
15 you five and a half months ago, there are other people  
16 responsible. It was their burden to prove it.

17 Governor Snyder accepted responsibility. The MDEQ  
18 made their mistake, and it impacted these kids. The City of  
19 Flint, they didn't run that plant well. At all.

20 At the end of the verdict form, you're going to be  
21 given a chart to fill in with a column for each of the kids --

22 THE COURT: Mr. Maimon, you have to speak into the  
23 microphone, or you won't be heard.

24 MR. MAIMON: I'm sorry, Your Honor.

25 THE COURT: I'm sorry.

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1 MR. MAIMON: I thought my loud voice would be enough,  
2 but that's okay.

3 You're going to be given a chart with columns for  
4 each of the kids to be given that you believe for each  
5 responsible party that they contributed to the injuries. And  
6 it's not without guidance that you're going to do it. Because  
7 in the instructions, it tells you that the percentage of fault  
8 you should consider the nature of the conduct.

9 Was Ed Kurtz just trying to save money? Was Darnell  
10 Earley just trying to do his job and get them out of the red  
11 and into the black? Did the MDEQ make an honest mistake, an  
12 honest mistake saying, "This is the way we've interpreted this  
13 rule for years. We think we're right"?

14 Did the City of Flint try their best? Did Mike  
15 Glasgow try his best? Were they constrained by the amount of  
16 money they had to hire staff? Still responsible but that and  
17 the extent to which their conduct caused or contributed to the  
18 injury.

19 And I'm going to suggest to you that the evidence  
20 suggests and the evidence supports an allocation of fault  
21 among the responsible parties at 50 percent for VNA, 25  
22 percent for LAN, 5 percent for Governor Snyder, 10 percent for  
23 the State of Michigan, and maybe 10 percent for the City of  
24 Flint if you add in all the people.

25 Now, why such a difference between LAN and VNA? VNA

1 -- LAN was there first. LAN designed the plant. Why do we  
2 believe that the evidence, the science actually supports this  
3 difference in allocation?

4 These are the experts. These are the people who were  
5 brought in to make sure that the plant was safe. These are  
6 the people who were brought in to say, "Design the plant" --  
7 and Jeffrey Hansen admitted that LAN's responsibility was to  
8 design upgrade so that it could be used safely.

9 VNA's expert admitted that lead and corrosion were  
10 part of the scope of responsibility to the city. But why such  
11 a difference and why such a difference if VNA, "We were only  
12 there for a month."

13 Why such a difference? Put aside the nature of their  
14 conduct and the fact that VNA has not been honest. This whole  
15 idea that orthophosphates was in the report where the lie was  
16 put to it by Marvin Gnagy's own testimony. Put aside that  
17 they did not recommend a corrosion-control study and the  
18 attempts to read a report in such a tortured way only to  
19 escape liability.

20 But why does the science support what we suggest?  
21 One of our -- our first witness was Dr. John Hoaglund, who's  
22 in back there. And Dr. Hoaglund, in addition to explaining a  
23 lot of chemicals to us and explaining why the water was more  
24 corrosive in the Flint River than Lake Huron, something  
25 evidently was above Dr. Gagnon's \$250,000 pay grade, and why

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1 the treatment that actually occurred in the plant made the  
2 corrosiveness of the water worse, he showed us from the Masten  
3 article itself, which talked about the Flint Water Crisis, the  
4 changes in the pH and alkalinity starting in May of 2014,  
5 which was when it started, and ending in October of 2015,  
6 which is when they went back to DWSD.

7 And I think it was Dr. Lawler or Mr. Ramaley, I don't  
8 remember which one, we put this up, and we said, "Do you at  
9 all disagree with the numbers here? These reflect what was in  
10 the monthly operating reports."

11 He said, "No, that's absolutely accurate."

12 But take a look at what happens when you divide up  
13 what happened before VNA and what happened after VNA.

14 Before VNA there was fluctuation in both the pH and  
15 the alkalinity, but it was pretty stable. It was pretty  
16 stable at that 7 to 8 range, which, by the way, the Brown  
17 article that Dr. Lawler cited as guidance says put in the  
18 orthophosphates, and keep it in that range. It was in that  
19 range.

20 After VNA came to town, it went off the cliff.  
21 That's the science. That's the unrebutted proof. There's no  
22 messing with those numbers. And that's why we believe that  
23 VNA holds the primary responsibility for what happened to  
24 these kids.

25 They were the second set of eyes. They were who were

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1 brought in to take a look at the system, the distribution  
2 system. They're the ones who said, "We've got it. We'll take  
3 a look at it all, and we'll tell you what's needed."

4 And they're the ones who stood up in public when they  
5 knew otherwise and said, "The water's safe."

6 So let's get back to damages. The damage done. And  
7 you can't divorce the damage that was done from who these kids  
8 are. And so let's talk about the categories of damages and  
9 what happened to each of these kids.

10 For damages up through today, you're going to be  
11 called to talk about the mental anguish, the loss of enjoyment  
12 -- the loss of social pleasures and enjoyments, embarrassment,  
13 humiliation. And separate and apart from that, the loss or  
14 impairment of neurocognitive function.

15 And forget about the fact that Dr. Gaitanis chose not  
16 to look at these kids. Forget about the fact that  
17 Dr. Thompson didn't bother, didn't take time to talk to these  
18 kids. Don't even think about Dr. Krishnan and Dr. Bithoney  
19 for a minute.

20 Who knows these kids better than their moms and dads?  
21 Who knows Aundrea Teed better than Apricott Berry? Apricott  
22 came in and told the truth. And for telling the truth, she  
23 was assailed by the lawyers for VNA. Almost accused of  
24 causing the harm herself, because she let her daughter drink  
25 the water. That's so disgustingly ironic that the experts are

1 blaming the moms for this.

2 When Ms. White, the daycare teacher for Aundreya Teed  
3 was cross-examined by the lawyers for VNA, "You let the kids  
4 drink the water?" These are the same people who told  
5 everybody the water's safe. I guess the question is: You  
6 actually listened to us? We were there for a paid due  
7 diligence. We were there to upsell. Didn't you know that?

8 What did Apricott tell us about her daughter? She'd  
9 seen extreme changes in Aundreya. Aundreya has shame because  
10 of her limitations, a lack of interest. And I don't how to  
11 spell interest, either. And this is straight out of the  
12 transcript. A butterfly, bubbly kid not herself anymore. She  
13 doesn't socialize. She feels shame. She has a lack of  
14 interest.

15 All of this, Dr. Krishnan told us, is a result of her  
16 acquired brain injury. And all of this, Dr. Bithoney says,  
17 has one cause and one cause only, and that wasn't rebutted by  
18 anybody. And that's the water in Flint.

19 She's judgmental about herself. She's unsocial. She  
20 has awkwardness. Now, maybe in Story number 2, in the world  
21 that their experts live in, that's just normal, not a problem.  
22 But in Story number 1 in the real world when a mom sees it and  
23 knows that it's abnormal of their kids, that's evidence.

24 Riley Vanderhagen, her mom came and gave us testimony  
25 that Riley is distracted. That she's angry, that she's easily

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1       frustrated. She told us that she gets distracted, angry.  
2       Anywhere and everywhere. She's angry anywhere, and it doesn't  
3       take anything to do it. It goes instantly.

4               Her grandma, Sherry Vanderhagen, told us that she  
5       loses her temper out of nowhere. She gets frustrated. She  
6       gets angry. She's forgetful.

7               Her father, Phil, said, "You know what? We're very  
8       worried." And this was the most ironic part. Because the  
9       cross-examination of all these people by the lawyers for VNA  
10      and sometimes LAN was, "Well, look how well they're doing on  
11      their report card in this grading period."

12              Who knows the schools that their kids go to. Who  
13      knows that at the end -- or during COVID, all you have to do  
14      is show up to get a good grade. Who knows that in younger  
15      grades, the schools are pushing their kids through, that  
16      they're helping them through, that they're helping them  
17      overcome their challenges. And that's what our schools should  
18      be doing. And that's what parents should be doing.

19              But that doesn't excuse the damage that's done. And  
20      he said, "What about when she gets to middle school? What  
21      about when she gets to high school, and there's going to be  
22      nobody there to say, 'Did you hand in your homework? Did you  
23      forget it?'"

24              The anger. Her head pops off. She can't explain  
25      something. She's frustrated. She's angry.



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1 Emir's mother came in and talked about the fact that  
2 he's become an introvert. I don't know if you remember.  
3 Every time I look at that corner above the camera, I think of  
4 Emir climbing the walls. And it's not like some kids who do  
5 it just because it's fun. It's because he can't help it.  
6 That's that impulsivity that Dr. Krishnan talked about.  
7 That's not something that's normal. That's not something  
8 that's good. That's something that was caused by the brain  
9 injury from the water that they were responsible for.

10 He has an attitude problem. He's destructive. He  
11 went from being bubbly to an introvert. An attitude problem.  
12 He bites his nails down until they're bleeding. Dr. Gaitanis  
13 is going to tell us that that's normal? He's destructive.

14 Daylaana Ware. Her mother, Dayquichisa, came in and  
15 told us she has a lack of focus. She lashes out. She's  
16 forgetful. She talked about how hard it is for Daylaana to  
17 stay focused. I'll never forget the story of the towel.

18 "Daylaana, go upstairs and get a towel." She goes to  
19 the stairs. She forgot what she was supposed to get.  
20 "Daylaana, go upstairs and get a towel." Daylaana goes to the  
21 top of the stairs and can't remember the instruction.

22 This is the same thing that Dr. Krishnan saw in her  
23 testing and observed. And it's something that the defense  
24 experts chose to be blind to by choosing -- because  
25 Dr. Gaitanis said, "When a doctor who's referring wants me to

1 see a patient, I'll see a patient."

2 And I asked him, "You weren't working for another  
3 doctor here, were you? You were working for these lawyers,  
4 and these lawyers didn't ask you to see the patients, did  
5 they?" They chose the limitations on their own experts.

6 Her grandma, Janeze Jackson, talked about how this is  
7 not the little girl that she knew. She lashes out. She has  
8 mood problems, attitude problems. She's become a loner.  
9 Sometimes the lashing out is physical.

10 And so one of the hardest things that we ask our  
11 jurors to do, it's not -- I'm going to tell you, and I'm going  
12 to tell you in a little bit how much respect we have for  
13 everything that you've done and the role that you play and the  
14 responsibility that you have.

15 But determining right from wrong, that's something we  
16 all know about. We know what's right, and we know what's  
17 wrong. And determining when an expert of the credentials and  
18 experience as Bill Bithoney comes in and says, "I've looked.  
19 And I'm telling you this is what caused this harm," and they  
20 don't bring anybody to say differently, that's not that hard.

21 And when you look at the other entities or people,  
22 you know right from wrong. But the most sacred thing that we  
23 entrust to our jurors is to say, "What is the value of the  
24 harm done?" You've done some heroic things showing up.  
25 You're not Marvel characters, but you're pretty darn close.

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1 But you can't fix their brains. And unfortunately,  
2 nobody can fix their brains. Lead, once it causes brain  
3 damage, it's permanent. That's the unrebutted testimony.

4 The only thing that our law, that our values allow  
5 for are monetary damages. And so that is the awesome  
6 responsibility that you have. And the first thing that you  
7 have to do is you have to take a look for each of these four  
8 kids and say from the time that they started having the  
9 problems, 2015, 2016, until now, five years, what is the value  
10 of that? Is it \$50,000 a year, which would be \$250,000 a  
11 piece for these kids? Is it a hundred thousand dollars a  
12 year, which would be \$500,000 for these damages? That is  
13 sacredly in your province. Sacredly something we only trust  
14 jurors to decide.

15 The same thing is true for the impairment, loss of  
16 impairment, and neurocognitive function. This is very real.  
17 A limitation -- if I got in an accident and couldn't raise my  
18 arm above this level and was limited, I'd know what it is, and  
19 I'd know why it happened, and I'd know what my limitations  
20 are. I submit to you this is so much worse.

21 A, because they're kids. B, because they don't know  
22 why these things are happening. Why does Emir climb the  
23 walls? Why can't Daylaana remember to go up and get the  
24 towel? Why does Aundreya not want to be friends anymore, even  
25 with her twin sister? Why does Riley have mood problems, have

1 focus problems? They don't even know.

2 And that impairment in and of itself is compensable.  
3 Is five years, is \$50,000 a year the appropriate amount? Is a  
4 hundred thousand dollars a year the appropriate amount?  
5 That's for you to decide. It's for you to decide for each of  
6 these four kids.

7 But now we're going to talk about the future. And  
8 most of what Dr. Krishnan talked about is implicated for the  
9 future. I put up there all the exhibit numbers. Please don't  
10 try and mark them down. These are the school records that she  
11 looked at.

12 She didn't ignore a good marking period. She didn't  
13 ignore a comment, an encouraging comment by a teacher that  
14 Emir is a leader. She didn't ignore that Riley has made  
15 improvement. She didn't ignore anything. She looked at all  
16 of the records. She spoke to each one of the kids. She  
17 tested them individually. She observed them during her  
18 testing.

19 And here's what her testing shows, and here I believe  
20 is the dishonesty of the defense. We went over this, but we  
21 didn't see this. When Dr. Krishnan talked about Aundreya's  
22 problems with disinhibition and impulsivity, she talked about  
23 the teacher report of blurting statements out in school. Now,  
24 Dr. Thompson said, "Yeah, I looked at the records." But he  
25 didn't address this specifically.

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1           When she said she showed impulsive behavior during  
2     testing, remember Dr. Thompson chose not to observe Aundreya.  
3     When she said she commissioned -- there were commission errors  
4     under the AARS, Dr. Thompson's slides were silent to it. He  
5     chose not only not to see these kids, but he cherry-picked  
6     what he would respond to with regard to Dr. Krishnan and say,  
7     "Oh, I think that's normal."

8           For problems focusing, there was a specific report by  
9     a teacher that Dr. Krishnan outlined. Dr. Thompson did not  
10    address that specifically. She talked about the AARS test.  
11    Dr. Thompson didn't address it. This difference occurring in  
12    2 percent or less in children, Dr. Thompson, in the slides  
13    that he showed you, that they put him on the stand to show you  
14    didn't address it.

15          Weakness and verbal reasoning. Yes, Dr. Thompson got  
16    up and said, "I looked at the WISC-V test. Shows normal  
17    intelligence." But he didn't address the impaired performance  
18    on the test of analogical reasoning. That's a subpart. And  
19    so they thought they could say, "Oh, I looked at it. He's got  
20    normal IQ," and not address what Dr. Krishnan did in a  
21    thorough and complete evaluation.

22          Not addressed by Dr. Thompson. Dr. Krishnan talked  
23    to Apricott Teed -- Berry. Dr. Thompson chose not to  
24    interview her.

25          The Vineland test, Dr. Krishnan showed you how it was

1 abnormal. Dr. Thompson, "Oh, that's in order with standard  
2 deviation. Not a problem."

3 The BASC-3, 88th percentile of aggression compared to  
4 her peers. That's the data. That's the result. He says,  
5 "That's normal."

6 Emir, the Montessori report, not addressed. The  
7 parents being afraid of labeling their children, he didn't  
8 bother to interview anybody. The BASC-3, he says that's  
9 normal even when 97 percent of kids do better.

10 Impulsivity. Dr. Krishnan saw it when she was  
11 testing Emir. He chose not to observe Emir. Poor focus. He  
12 chose not to observe Emir. He didn't address the CVLT. It  
13 was not interesting testimony, I'm sorry, Corey, to have her  
14 go through all the tests and what they're there for. But it  
15 was important. It was the science.

16 They deserved it. These kids deserved a thorough  
17 analysis of them, not some, "Send me some records, and I'll  
18 tell you that they're normal."

19 Dr. Thompson chose not to observe Emir.

20 He didn't address the kindergarten comment. He  
21 didn't address the implementation of the reading intervention  
22 plan for Riley. He didn't address the strong proactive  
23 interference in the CVLT-C test. And with the depressive mood  
24 symptoms under the BASC-3 were 82 percent, he says, "That's  
25 normal."

1           The impaired visual reasoning on the WISC, he says,  
2       "That's normal." The high error rate on the WCST, he didn't  
3       address it.

4           For Daylaana, it's the same thing. Dr. Thompson  
5       either says it's normal or he doesn't address it or it's  
6       something that he doesn't have the ability to comment on,  
7       because he chose not to look at these kids.

8           The BASC-3, he says, "It's normal," every time. No  
9       matter how badly they perform. Impaired performance, not  
10      addressed. The discrepancy between the visual and the visual  
11      reasoning, almost two standard deviations. Not addressed.

12          And so when you're going to have to fill out those  
13      charts and talk about what's going to happen to these kids, I  
14      take back what I said about damages, that it's the hardest job  
15      that we could ask you to do. Talking about the future of a  
16      kid is really the hardest part. And it's thankless for you.  
17      Because this is their only day in court.

18          This is not something, well, we'll see if you need it  
19      later on and then we'll think about it. This is the only  
20      trial for these kids. And you are the only jury who will ever  
21      award them damages for what they suffered.

22          And so we're going to talk about damages in the  
23      future, because you are the only jury that will ever decide  
24      their cases.

25          Dr. Bithoney, who has seen thousands of kids and

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1 knows about lead poisoning like nobody else, told us that it's  
2 a downward spiral. The problems that a kid has -- and it  
3 makes sense. The judge has told you don't check your common  
4 sense at the door. It makes sense.

5 Brain damage that a kid has at 6, 7, 8, once they get  
6 to be a teenager, once they get in their 20s, it's only going  
7 to be more profound.

8 Dr. Krishnan says these problems will amplify over  
9 the course -- I took a quote for Aundrea -- over the course  
10 of her career. And that saying that over time, there are  
11 going to be bumps when these things are more profound for  
12 them. When they have to try to get some skills and train.  
13 When they have to enter the employment. When they have to get  
14 into personal relationships and marriages. When they have to  
15 earn a living. When they have kids. When they start to grow  
16 older.

17 Every step of the way, the challenges, the  
18 difficulties will amplify. They'll bump up.

19 It's harder for people to maintain employment.  
20 Social interactions. The problems continue over time.

21 So let's start with the easiest part of this  
22 thankless job. Because we had a witness on that, Dr. Crakes.  
23 He was the only economist who came, and his testimony was  
24 un rebutted.

25 And what he said is, "I can't tell you anything about



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1 these kids individually and what they will be able to do or  
2 not be able to do. I don't have a crystal ball. I'm an  
3 economist, not a soothsayer. But I do know the statistics of  
4 median values, that's right in the middle. Some people do  
5 better. Some people do worse. But for each level of  
6 educational attainment, I'm going to give you the median  
7 values."

8 And the median values of earnings, he said, for high  
9 school is about \$4,100 per year. He was asked, "Oh, but you  
10 can't say if it's more difficult to graduate high school, more  
11 difficult to graduate college that there will be any damage,  
12 any loss." He says, "I absolutely can."

13 That's because we have the median values. If you're  
14 underperforming in your category, you earn less. If you  
15 over-perform, you earn more. I'm giving you the median value.  
16 And I'm going to talk to you about median values.

17 He says, "There would still be losses, even if it was  
18 just more difficult." And so Dr. Crakes talked about median  
19 values. He talked about how do we compare what will happen to  
20 each of these kids if they were unimpaired. We're going to  
21 compare what is the difference between whether they don't  
22 graduate -- whether they only graduate high school, whether  
23 they don't graduate college, or whether they don't get a  
24 master's. Those are the benchmarks. No one is here to say  
25 anything about, you know, what the future absolutely is with

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1 absolute certainty. We can't do that.

2 As Dr. Krishnan says, she's rooting for all of these  
3 kids. But realistically speaking, they're just not going to  
4 make it. He talked about the fact that over the last 50  
5 years, earnings have grown in this country at 3.5 percent a  
6 year. And if you look over the last several years, forget  
7 about with the inflation that we have now, they're rising even  
8 more. The cost, the future values are even more.

9 But when he talked about discounting, he talked about  
10 a 5 percent discount factor and showed us what the result of  
11 that is.

12 For Aundrea, for the different scenarios that he set  
13 out compared to if she had gotten a bachelor's degree  
14 unimpaired, these are the losses, depending on the scenarios  
15 according to Dr. Crakes and according to the statistics.  
16 According to what the actual data shows us. Same way as that  
17 data showed us that when VNA came to town, everything fell off  
18 the cliff.

19 That's compared to a bachelor's degree. If you  
20 believe that she would have gotten a master's degree, the  
21 numbers are higher. For Riley, compared to a bachelor's  
22 degree, it's between \$3.5 and \$6.1 million undiscounted. And  
23 we'll see how to get there. For our master's between 5 --

24 (Technical interruption.)

25 MR. MAIMON: I don't know why Siri thinks --

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1 THE COURT: Siri chimes in every now and then.

2 Strike that.

3 MR. STERN: I'm sorry, Ms. Siri.

4 Between \$5.2 and \$7.9 million.

5 For Emir, between \$5.9 and \$8.5 million or

6 \$8.4 million if you round down, a bachelors. If he would have

7 gotten a master's, \$7 million to \$10.5 million.

8 And Daylaana, between \$3 million and \$5.1 million.

9 Just the statistics. And just the median values.

10 And for a master's, 4.4 to 6.5.

11 And the most important thing that I can impress upon

12 you when you talk about future damages is to do it with that

13 growth factor. Because as the judge has instructed you, you

14 should not reduce or discount.

15 And so you have to have that growth factor in there.

16 And so here's what I did, not because I'm good at math. I'm

17 not. And not because I know have to use an Excel spreadsheet,

18 because I asked Ryan to do it for me.

19 I took Dr. Crakes's numbers, and I said, "What

20 happens if we simply start with this number for 2027 for

21 Aundrea when she's going to be 18?" The loss in that year of

22 \$35,630, the difference, not from master's. Not from not

23 graduating high school, but the median. That's the number.

24 And what if we grow that by one -- by 5 percent a

25 year, 1.05. And this is what happens to undiscounted numbers.

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1 They look like big numbers. But you saw Dr. Crakes explain  
2 that those big numbers, when we get out 50 years, 54 years  
3 from now are actually small numbers in present value.

4 And as the judge has indicated, this is the way it  
5 has to happen. So I'm going to ask you, please don't be  
6 scared by big numbers, because they're undiscounted.

7 For Riley, I started with \$40,886, which is his  
8 number, because she's not going to be 18 until 2031, and it  
9 has more time to grow. That's what he explained to us. And  
10 if you simply multiply by 1.05 each year, and I apologize you  
11 don't have a table like this there. You're going to have to  
12 do some multiplication, 1.05, 1. -- whatever the growth factor  
13 that you choose to fill in the form --

14 THE COURT: Did somebody have a question?

15 MR. MAIMON: No.

16 THE COURT: That's an excellent question, though.  
17 The PowerPoint -- remember when I told you about demonstrative  
18 exhibits versus evidence that's received? All of the  
19 PowerPoints are what we call demonstrative exhibits and are  
20 not considered evidence.

21 MR. MAIMON: But all I did, as I told you, is I  
22 started with a number, and I grew it 5 percent a year. If you  
23 think the right number is 4 percent, it grows at 4 percent a  
24 year. If you think the right number is 6 percent, it grows at  
25 6 percent a year to be undiscounted. That's your choice.

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1 Dr. Crakes talked about 5 percent, but it's your  
2 choice, because you're the jury. You're the ones who make the  
3 decision. That responsibility, thankfully, is yours.

4 For Emir, I started in 2019, when he was going to be  
5 18 with \$38,168. And for Daylaana, we started in 2026,  
6 \$34,425. And this is what happens, and it grows at 5 percent  
7 a year.

8 Now, I told you that this was the hardest part.  
9 Wrong again. The really hardest part, the part where we bring  
10 our humanity. The part where we can't feed it into a  
11 computer. There's no Excel spreadsheet. And that's the  
12 damages that are not economic in nature.

13 The mental anguish, the loss of enjoyment, social  
14 pleasures, embarrassment, humiliation. These must also be  
15 awarded in future values. They have to be growing, otherwise  
16 the present value is not what you intend.

17 And so for each one of these, I put together just as  
18 a demonstrative to show that we start in 2022, because we  
19 still have time -- you wouldn't believe it by how long we've  
20 been here, but we still have time in 2022. And to be fair and  
21 adequate and full damages, these kids deserve the rest of the  
22 year.

23 But whatever it is, even if you start in 2023,  
24 whatever the number is, that has to be grown also to account  
25 for it being awarded in undiscounted numbers.

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1           And if you decided that \$25,000 a year was the right  
2 amount up until this point in time for mental anguish, denial  
3 of social pleasures, embarrassment, humiliation, maybe you  
4 start there, and you grow it there. If you decided that  
5 \$50,000 was the right number for that, maybe you start there,  
6 and you start growing it there.

7           But here's why it's really the hardest, hardest part.  
8 Because there are bumps. There are jumps. There are times  
9 and points in life when the impacts of injuries like this  
10 become more and more profound. We talked about what they are.  
11 The milestones of life.

12           And as these kids express and experience those  
13 milestones, the profundity, how deeply this will impact them  
14 will jump. And so I'm not going to tell you what year it  
15 happens in. I'm going to ask you, though, to consider that  
16 along the way, as we move from 2022 to 2032, 2042, 2052,  
17 consider the bumps and the jumps along the way.

18           When it is called for to give reasonable  
19 compensation, to fully and adequately compensate these kids  
20 for what they went through, to say, "No, at this point, a  
21 5 percent growth factor is not enough. It has to be jumped  
22 up. It has to be a quantum leap at that point to a new level  
23 to account for what's going to happen in their lives at that  
24 time."

25           And then at that point, grow by whatever factor you

1 believe is the right amount to award in undiscounted forms.  
2 You decide based on the evidence, Dr. Krishnan and  
3 Dr. Bithoney testified and it was uncontroverted that there  
4 are big jumps. It does spiral every step of the way, and it  
5 will be more profound along the way. And so this is the task  
6 that you're going to be faced with.

7 And I want to end where we began. Because this case,  
8 if I had to put it in one word, the word I would use is  
9 "responsibility."

10 We took on the responsibility to represent these four  
11 kids. And because we did, I want to apologize to each and  
12 every one of you for the time that we took that we didn't have  
13 to take. Showing another videotape, asking another question,  
14 putting another exhibit in. Objecting where we felt that it  
15 was appropriate.

16 I know we tasked your patience. I know that there  
17 could have always been one less question. There probably  
18 could have been a half hour less of questions a lot of times.  
19 And so I apologize for that. But we were doing that because  
20 we had a responsibility. We thanked you up front for  
21 understanding that we're not going to parade Emir and Daylaana  
22 and Riley and Aundreya here. We don't believe they deserve  
23 that. That's not what this is about. This is not a show.

24 And we thanked you in the beginning. I want to thank  
25 you again for understanding that that's not what we did. You

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1 didn't get to meet them in person. That's our responsibility.

2 The judge has responsibilities. The judge is a  
3 Federal District Court judge of the Eastern District of  
4 Michigan. She's the judge of the law. She is responsible for  
5 making all the legal rulings. She talked about that. She's  
6 responsible for giving you the legal instructions that you're  
7 to follow and saying, "You have to follow this." She's  
8 responsible for telling the lawyers, "Move on." And we have  
9 to listen to it.

10 You have the awesome-ness of responsibilities, to  
11 render a verdict. To say, "You know what? Right is right,  
12 and wrong is wrong." And you can do any business you want.  
13 You can try and upsell anybody you want. You can try to put  
14 in bids for the KWA if you want. And that's what this country  
15 is all about.

16 But when people get hurt, you can't run away from  
17 your responsibility for it. You have the responsibility to  
18 render the verdict. They've shirked their responsibility.  
19 They haven't accepted an ounce of it.

20 And so everybody has acknowledged responsibility  
21 except VNA and LAN. Unlike the experts that VNA chose to  
22 bring to talk about these kids, Dr. Krishnan, as Corey said,  
23 heard their voice. I think Dr. Bithoney heard their voice  
24 also. I'm going to ask you, please, when you deliberate, hear  
25 their voices. Hear their voices and then speak the truth.



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1 I want to thank you for your dedication. I want to  
2 thank you for your sacrifice. I want to thank you for your  
3 attention. I want to thank you for your patience. And most  
4 of all, I want to thank you for your justice.

5 THE COURT: Okay. Thank you, Mr. Maimon.

6 And now, as promised, we'll take another short break.  
7 And then we'll turn right to the VNA closing argument.

8 THE CLERK: All rise for the jury.

9 (Jury Out)

10 THE COURT: All right. We'll be in recess.

11 (Brief Recess)

12 THE CLERK: Please be seated.

13 THE COURT: Mr. Stein, I understand that -- Leslie,  
14 can you ask Bill to bring the jury -- that your closing may go  
15 about a half an hour.

16 MR. STEIN: I think it's about two hours long. Again  
17 I'm fine stopping at 2:00 and then picking up tomorrow.

18 THE COURT: I'm going to -- I've asked Bill to ask  
19 the jury if today they can stay until 2:30 so that you don't  
20 have to be interrupted. So we'll see what we learn. I'm just  
21 standing for myself. All of the jurors can stay until 2:30.  
22 So I think we can get it done.

23 Dr. Hoaglund.

24 DR. HOAGLUND: Hi.

25 THE COURT: We saw you at the beginning. Welcome

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1 back. We've been here the whole time. Have you had the  
2 tremendously hot weather in Nevada?

3 DR. HOAGLUND: That's always.

4 THE COURT: Always. But I thought it was getting  
5 even hotter.

6 DR. HOAGLUND: It is, it is. I think --

7 THE COURT: Oh, here we go.

8 THE CLERK: All rise for the jury.

9 (Jury In)

10 THE COURT: Welcome back.

11 And please be seated.

12 And thank you to the members of our jury for your  
13 willingness -- I think Bill communicated you'd be able to stay  
14 until 2:30 today. Good. Okay. We all appreciate it a great  
15 deal.

16 So, Mr. Stein.

17 CLOSING ARGUMENT FOR DEFENDANT VNA

18 MR. STEIN: Thank you, Your Honor.

19 Good afternoon. I have to say it feels like another  
20 lifetime ago when I stood before you in February in my opening  
21 statement and tried to introduce this case to you. And like I  
22 think everyone else in this room, I can't believe that we  
23 finally made it.

24 For more than five months, you've listened patiently  
25 to all of the testimony. You've watched hours of deposition

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1 videos. You've carefully examined the evidence. I'll say  
2 what everyone else has said, but you have been a remarkably,  
3 remarkably diligent and attentive jury.

4 And on behalf of the People of VNA and all of the  
5 lawyers, we thank you deeply for your exemplary service on  
6 this jury.

7 Now, for all this time so far, your job has been to  
8 listen and to observe while the lawyers got to do all of the  
9 talking. And you've actually even been instructed not to talk  
10 about the case with anyone, not even amongst yourselves. And  
11 in a case this long, that cannot have been easy to sit  
12 patiently for more than five months listening and not having a  
13 chance to speak.

14 I'm sure you all have questions and opinions and  
15 ideas about the events and the people that you've heard about  
16 over these past five months. And the good news is, that it  
17 very soon will be your turn. Most likely as soon as tomorrow.  
18 You'll finally be able to take a more active role in this  
19 case.

20 It will finally be your chance to express your views  
21 and to discuss the issues and debate them with your fellow  
22 jurors.

23 Now, I expect at least at the beginning, you probably  
24 all are not going to agree about everything. That's not  
25 usually how life works.

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1 But it's really important to us, to all of us and to  
2 our system of justice that each of you participate fully in  
3 your deliberations. That you each feel empowered to express  
4 your thoughts and your opinions and exchange views with your  
5 fellow jurors.

6 And it's through that process, that process of  
7 discussion and debate and deliberations that we all know  
8 you're going to reach a true and just verdict.

9 Now, as Judge Levy explained yesterday, to reach your  
10 verdict, you're going to have to go through a series of  
11 questions, and you're going to have to address each element of  
12 the plaintiff's claims one by one, step by step and see if  
13 these gentlemen have met their burden of bringing you the  
14 evidence to prove these claims.

15 And, members of the jury, it's not going to surprise  
16 you to hear me say that we think when you go through the  
17 evidence in that way, when you answer those questions one at a  
18 time, that the answers are going to be clear. And that is  
19 that they have not met their burden. They haven't proven  
20 their case, and that your verdict should be in favor of VNA.

21 Now, what I'm going to do this morning is organize my  
22 remarks. You just heard my introduction. Organize my remarks  
23 around three basic themes.

24 The first one is that VNA did good work in Flint.  
25 The second one is to respond to some of what you just heard.

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1 And show that the evidence doesn't show that these plaintiffs  
2 are injured. And, third, that the government officials are  
3 really the ones responsible.

4 So what's the first question? VNA did -- sorry --  
5 VNA did good work in Flint. On this point, we think the  
6 evidence really doesn't leave much doubt that VNA was not  
7 negligent.

8 What did they do? They sent two highly skilled and  
9 experienced engineers to Flint to perform a one-week  
10 assessment of Flint's water system. During that week, those  
11 engineers analyzed every aspect of Flint's water treatment  
12 process, and they offered a set of careful, thoughtful  
13 recommendations that if anybody had actually bothered to  
14 listen, would have actually done a lot of good for the City of  
15 Flint.

16 They had the power to speak, and they spoke. And if  
17 the people in charge of the water plant had actually bothered  
18 to listen, it might have helped fix Flint's water problems.  
19 Flint did the job it was hired to do, and it did that job  
20 well.

21 And as I say, I'm going to walk through the evidence  
22 on this in much, much more detail in a moment.

23 But that's only the first question you have to  
24 answer. Because to return a verdict for the plaintiffs, what  
25 you have to do is then turn, even if you find that VNA was

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1 negligent -- and, again, I don't really think you can --  
2 you'll still have to answer a whole second set of questions  
3 relating to whether or not any of these children have suffered  
4 an injury that was caused by something VNA did or didn't do.

5 And I say it's a set of questions rather than one  
6 question, because when you look at Judge Levy's instructions,  
7 I think you'll see that it's actually a series of questions  
8 that all get kind of consolidated together around the issue of  
9 injury.

10 You'll have to examine whether you think any of these  
11 children are suffering from an injury. And here I take it  
12 they don't think so. But We think the testimony of  
13 Dr. Gaitanis and Dr. Thompson was convincing and should  
14 convince you that they're not. And make no mistake, that's  
15 good news. That's good news that these children seem to be  
16 doing well.

17 But even then, even if you conclude that VNA was  
18 negligent and you conclude that these children are injured,  
19 you'd still have to reach further questions, because you'd  
20 still have to decide whether or not that injury was caused by  
21 exposure to lead in Flint's drinking water.

22 And, again, we don't think the evidence supports that  
23 at all.

24 And then even then, even if you find that they're  
25 injured and you find out that injury was caused by exposure to

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1 lead in Flint's drinking water, you'll still need to decide  
2 whether that injury was caused because of something that VNA  
3 did, which means when you think about the timeline, that  
4 you'll have to say the injury was caused because they were  
5 exposed to lead after February 10 of 2015 and that that injury  
6 would not have occurred if VNA did something different.

7 And, again, I'm going to go through this evidence in  
8 detail and explain our view of the evidence to you. But I  
9 have to say on this point, just by way of preview, I think the  
10 evidence is really overwhelming.

11 On these injury issues, whether it's the lack of  
12 elevated blood lead levels, the use of a bone lead device  
13 that's not used by any doctor anywhere in the United States,  
14 or even the use of questionable statistics to try and convince  
15 you that these children were exposed to lead in their water,  
16 Mr. Maimon and Mr. Stern have failed to meet their burden of  
17 proof. And I look forward to going through this evidence with  
18 you shortly.

19 Now, finally the third topic, this question of the  
20 government officials that are responsible. Because if you  
21 find that VNA was negligent or LAN was negligent and you find  
22 that there's an injury, which was caused by that negligence,  
23 you then have to turn to the third question of allocating  
24 fault.

25 And, you know, I find it interesting that Mr. Stern

1 said we're trying to get a free pass. We're trying to shift  
2 blame to these people. We're trying to get out of our  
3 responsibilities, to use Mr. Maimon's terms. That's not  
4 what's going on here.

5 You heard Judge Levy's instructions yesterday. It's  
6 the law in the State of Michigan that you need to allocate  
7 fault among whatever parties you find are responsible for the  
8 injuries. That's what the law requires you to do.

9 So VNA's not looking for a pass. They're not looking  
10 to shift blame. As you're going to hear from our view,  
11 there's no blame to shift. We're simply offering evidence.  
12 And today, our arguments about that evidence so that you can  
13 do your duty as jurors and answer that third question about  
14 how you allocate fault among all the responsible parties.

15 Now as I said, when VNA took on this job, they did  
16 good work. But, members of the jury, they had no idea they  
17 would be dealing with a group of politicians and bureaucrats  
18 who would engage in the kind of behavior that you've seen and  
19 heard over the course of this trial.

20 You have heard now that many of these people had been  
21 charged with crimes for their roles in the Flint Water Crisis.  
22 And you heard -- right? -- Mr. Maimon made a big deal that we  
23 didn't present these witnesses to you. You heard why that is.

24 Because many of them invoked their rights under the  
25 Fifth Amendment and declined to come to court, because they



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1 thought their testimony would further incriminate them.

2 VNA didn't know when it took this job that it would  
3 deal with public officials like that. They could never have  
4 guessed that they were dealing with people like the MDEQ  
5 officials who lied about corrosion control to the EPA or who  
6 instructed Mike Glasgow to falsify the lead and copper  
7 results.

8 And they certainly never expected that when they  
9 asked the city to provide lead data that the city would  
10 provide incomplete data or fail to share important data  
11 altogether.

12 VNA is not responsible for this water crisis. The  
13 people running the Flint water plant, names that you've heard  
14 about for five months now and are probably household names,  
15 names like Mayor Walling, Howard Croft, Duffy Johnson, Brent  
16 Wright, Mike Glasgow, those people were there for years  
17 operating that plant. They were there for years. In some  
18 cases, decades.

19 Mike Prysby from the Michigan Department of  
20 Environmental Quality, you heard that he'd be supervising the  
21 Flint Water Treatment Plant for decades. Governor Snyder,  
22 Governor Snyder was there for the entirety of the Flint Water  
23 Crisis. The MDEQ and the EPA, they were there, as well, along  
24 with these emergency managers, Earley, Ambrose, and Walling.

25 The EPA learned about issues in January of 2015 and

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1 was there throughout the rest of the crisis.

2 VNA was there for one week, a one-week assessment.

3 And you're supposed to believe that the fault lies with this  
4 consultant that was there for a week and offered good  
5 recommendations that no one listened to. When these other  
6 people were there for decades running the plant.

7 The MDEQ, the EPA, the governor of Michigan, the  
8 people running the plant, they knew everything about the Flint  
9 Water Treatment Plant. They had all the data.

10 It just makes no sense to me to say that, "No, the  
11 responsible party is this consultant that came in for one week  
12 and tried to help."

13 And I was surprised to hear Mr. Maimon explain that  
14 the reason for that, which he says is data, is because the pH  
15 and alkalinity dropped after VNA was there? VNA wasn't  
16 running the plant. VNA offered their recommendations. No one  
17 followed them. And then they left. So he can point to that  
18 chart. I really don't know what that means. And how that  
19 gets to 50 percent of the blame is really just a  
20 head-scratcher.

21 Now, members of the jury, you saw and I respected  
22 that Mr. Stern was very emotional about this case. He  
23 commented on that. And Mr. Maimon was, as well. I don't know  
24 if I'm going to get as emotional. I think it's just the type  
25 of person I am.

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1 But make no mistake. I want to tell you very clearly  
2 this is a very serious and important case for the people of  
3 VNA.

4 Because in this courtroom, they have been falsely  
5 accused of poisoning children. And that is an accusation that  
6 is a very serious accusation. So, no, it's not damage  
7 control. It's not spin. It's not -- I don't know which is  
8 Story 1 or Story 2. It's not a story. It's a defense. A  
9 defense to serious false accusations that have made against  
10 the people of VNA, and we're proud to be able to present that  
11 defense to you over these past five months and to summarize it  
12 here this morning.

13 So let me turn to the first topic. The question of  
14 the work that VNA did in Flint. As I've said, VNA did good  
15 work in Flint. Now, to evaluate this, what Judge Levy has  
16 instructed you is that you need to consider the concept of  
17 professional negligence. And yesterday she gave you detailed  
18 instructions on what that means.

19 And for these purposes, as you've heard when you're  
20 looking at VNA's work, it means that plaintiffs' counsel have  
21 to prove to you that it's more likely true than not that VNA's  
22 work in Flint was not consistent with the standard of care.  
23 Or in other words, that it was not consistent with what a  
24 water engineer of ordinary learning, judgment, and skill would  
25 do under similar circumstances.

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1           And Judge Levy also instructed you that to prevail in  
2   this claim, plaintiffs' counsel can't just pick anything they  
3   don't like about what VNA did. They can't just say they  
4   weren't honest as if that's what's at issue here. They have  
5   to prove specific claims of negligence. The specific claims  
6   that are set forth in the jury instruction. And there are two  
7   of them.

8           This is not about some 30,000 foot view about what  
9   they might think engineers should do. It's about these  
10  specific claims.

11           First, did VNA breach the standard of care by failing  
12  to recommend immediate implementation of orthophosphate  
13  corrosion inhibitors?

14           And, second, did they breach the standard of care by  
15  failing to recommend a return to receiving water from the  
16  Detroit Water and Sewerage Department?

17           That's it. You have to find that they breached one  
18  of those two things. Not something else.

19           In order to do that, as Mr. Maimon talked about with  
20  respect to the government officials he's trying to defend, you  
21  can't use the benefit of hindsight. You have to look at what  
22  VNA knew at the time, what information was available to them,  
23  and what a reasonable engineer would have done under similar  
24  circumstances. That's the first part of the analysis.

25           What were the circumstances?

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1           So I want to talk about that. I want to talk about  
2 the scope of VNA's work. And, again, no one's looking to hide  
3 behind the contract or evade responsibility by doing that.  
4 But if you're going to evaluate what were the circumstances  
5 that VNA was in, you have to look at what they were hired to  
6 do and what was going on in Flint at the time.

7           So where do you begin? Well, when VNA arrived in  
8 Flint in February of 2015, Flint was already ten months in to  
9 a complex and highly charged water crisis. Months before VNA  
10 ever even got there, Flint had to issue multiple boil water  
11 advisories due to the presence of fecal coliform in the water.

12           For months, they'd been dealing with an explosion of  
13 citizen complaints about undrinkable, dirty water. And they  
14 had recently found, Flint had recently found that their water  
15 contained a high level of a dangerous cancer-causing chemical  
16 called the TTHM.

17           That was all known. And so, yes, when VNA arrived in  
18 Flint there were real challenges.

19           And on top of that, the city was broke. Everyone  
20 knew that. And the residents and the politicians were at each  
21 other's throats. People were carrying around jugs of brown  
22 water and trying to meet with public officials and get them to  
23 pay attention to what was going on with the water. The people  
24 were angry and rightfully so. They were right to be angry.

25           You heard it was striking to me when Sue McCormick,

1 the former director of the DWSD, was here. She told us that  
2 when she was invited to come to a Flint City Council meeting,  
3 people told her, "You don't want to get involved in that  
4 mess." It was a highly charged situation. It was a  
5 full-blown crisis.

6 And, you know, I've been struck throughout this trial  
7 and I guess Mr. Stern tried to say that we're pivoting,  
8 because sometimes we say it's a crisis, and sometimes we say  
9 it's not. But the issue is that this was the Flint Water  
10 Crisis. The Flint Water Crisis. We've been consistent about  
11 that. It's not the Flint Lead Crisis. Because every time  
12 issues about discolored water or smelly water or all the  
13 things we heard about the water, every time that came up, it  
14 was sort of dismissed by plaintiffs' counsel as, "Well, that's  
15 just aesthetics. You know, that's just sort of a precursor.  
16 Let's get on to the real issue, which is the lead."

17 And of course they're saying that, because that's  
18 what their claim is about. They're seeking injuries for lead  
19 poisoning.

20 But when you think about the circumstances in which  
21 VNA arrived, when you're evaluating did they do what would be  
22 expected of a reasonable engineer, the question is not: Let's  
23 look at everything we know about lead now. It's: What was  
24 going on with the water then.

25 And this was a full-blown water crisis.

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1           And you heard about some of this from Miguel Del  
2           Toral. He explained that it was sort of like a game of  
3           Whac-a-Mole. Every time there was one problem, they would try  
4           to fix that problem, and another problem would pop up.

5           You heard something similar from Dr. Bellamy, who  
6           explained that when dealing with water treatment, you have to  
7           deal with -- his big thing was this concept of simultaneous  
8           compliance. He explained that sometimes you'll add a chemical  
9           to address one issue, and that chemical interacts in a way  
10          that it causes another problem. And that's what you were  
11          seeing in Flint at the time.

12          They would try to fix one problem; it would cause  
13          another problem. It was a game of Whac-A-Mole. The city was  
14          just totally failing. Mr. Maimon agreed. The city was total  
15          failing in how they were running that plant.

16          And you saw -- I thought this chart was very telling.  
17          You saw this chart during Dr. Gagnon's testimony. And he  
18          explained that one of the most basic tasks of a water  
19          engineer, a water operator is to keep pH and alkalinity within  
20          a very narrow band so that it doesn't vary much from day to  
21          day.

22          And you can see here up until the water switch,  
23          that's exactly what happened. Then the switch happened, and  
24          immediately, the pH and alkalinity are all over the place.

25          So what happens? The city knows they've got this

1 water crisis. They've got all of these problems. And they  
2 put out a request for proposals for a second set of eyes for a  
3 water quality consultant.

4 And, again, I can't resist but, you know, Mr. Maimon  
5 said, "Well, they're 50 percent responsible. The city is 0.  
6 They're 50 percent, because they were the second set of eyes."

7 What about the first set of eyes? Why is the first  
8 set of eyes responsible for nothing? The first set of eyes  
9 that was there throughout this entire crisis.

10 But in any event, the city puts out their request for  
11 bids, and VNA was the only consultant who responded.  
12 Initially, the request called for the consultant to do a  
13 broader amount of work. But given the financial constraints  
14 in the city, it was eventually decided that they wouldn't go  
15 forward with everything they had initially wanted. And  
16 instead they would just enter into this contract with VNA,  
17 which called for a one-week assessment.

18 The contract specified this would involve a kickoff  
19 meeting with the client and a top-down assessment as defined  
20 in the proposal. VNA would provide two water and two  
21 communication experts for a total of 40 hours each. The  
22 product from that week would be a letter or a PowerPoint  
23 presentation reviewing actions taken by the city to date. And  
24 the scope of work will involve the water plant, distribution  
25 systems, and communications with customers.



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1 THE COURT: Mr. Stein, can you slow down just a  
2 little bit. I want to make sure the record --

3 MR. STEIN: Sure. I'm trying to finish by 2:30.

4 THE COURT: I know. But poor Jeseca has to make it  
5 to 2:30, too.

6 MR. STEIN: Thank you. And please let me know if I  
7 speed up again.

8 THE COURT: Okay.

9 MR. STEIN: A brief word about these contracts,  
10 right? Mr. Stern is absolutely right. The contract doesn't  
11 define the standard of care, and we don't suggest that it  
12 does. But the contract is certainly relevant in understanding  
13 the circumstances that VNA was in. And the scope of what they  
14 were hired to do.

15 Now, what else did you hear about how this project  
16 developed? There's a -- specifies in the contract that  
17 there's going to be a kickoff meeting. And you heard from  
18 Dr. Bellamy who, again, is as experienced as it comes when it  
19 comes to water treatment. And he said that he had done  
20 projects like this. And the first task is you meet with the  
21 people you've contracted with, and you try to find out what's  
22 going on in the city and what issues they need your help with.

23 He explained that he would typically have that kind  
24 of a meeting and then you would get to specifics.

25 And all the testimony from the plant operators, from

1 Mr. Gnagy and Mr. Chen, from everybody who was involved, all  
2 the testimony was clear that the initial focus was two things.  
3 Red water concerns and TTHMs.

4 Now, that's not to say as a lot of the questions we  
5 heard from the plaintiffs' side sort of suggested. It's not  
6 to say that VNA is trying to say, "Well, all we had to look at  
7 was red water concerns and TTHMs." No one on our side is  
8 saying that. We recognize this was a contract to do a  
9 one-week assessment of the water system, and that's what VNA  
10 did.

11 But if the known issues, when you walk in the door,  
12 are that the water is brown and nobody can drink it and, "Hey,  
13 we just had this TTHM violation, and by the way, we attached  
14 to the request for bids a copy of the TTHM violation," then  
15 it's only logical that your consultant would say, "Well, let  
16 me start by looking at those known issues."

17 And, you know, this makes sense. I think we all have  
18 this kind of experience in our daily life. If you went to a  
19 doctor for a check-up and you wanted just a general check on  
20 your overall health, you might ask the doctor to take a look  
21 at your health.

22 But if you also knew when you walked in the door that  
23 you had high blood pressure and a sore back, you'd probably  
24 mention to the doctor, "I have high blood pressure and a sore  
25 back. Let's start with those issues and then see what else

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1     you can figure out." And that's -- there's no mystery.  
2     That's what was going on here with VNA. They knew about red  
3     water. They knew about TTHMs. So they started with those  
4     issues and then moved on to more broadly evaluate the water  
5     system.

6             You have in evidence their notes from this February 2  
7     kickoff call where they discussed all these issues. And  
8     you'll see when you look at them that TTHM issues were front  
9     and center.

10            And, again, as I said, when asked directly, people  
11     like Mike Glasgow, the actual -- the only licensed operator  
12     with the plant, "What was VNA there for?"

13            "I think it was in regards to our TTHM violations."

14            Nevertheless, as I said, VNA didn't limit themselves  
15     to TTHMs. They took a broad look at a variety of issues. And  
16     you can see, because it's in evidence, the technical  
17     memorandum that VNA put together, which went through all of  
18     the issues they looked at.

19            It contained all of their calculations, all of the  
20     tests that they ran, covering all of these different issues.  
21     Treatment plant operation, THM concentrations,  
22     characterizations of the source water, TOC, total organic  
23     carbon , oxidative conditioning, bromate formation, coagulant  
24     screening, lime/soda softening evaluations, midpoint  
25     chlorination and other issues.

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1           And what is this document, this technical memorandum?  
2       This was a document you heard the cover email made clear.  
3       These were Marvin Gnagy's handwritten notes from his work  
4       during that one-week assessment that after they left, the city  
5       said, "Hey, do you mind typing up your notes and sending them  
6       to us so that we can have them in a form that others can look  
7       at and use?"

8           And he said, "Sure. No problem. Here are my notes."  
9       That's what this document is, despite all the questions about  
10      what was included in it and what wasn't included in it.

11           And you also saw VNA's final report, and we're going  
12      to go through the recommendation on corrosion control. That's  
13      obviously the focus here. But that's not the only thing in  
14      the final report. They made recommendations about the  
15      addition of permanganate, the reduction of the ozone feed, the  
16      proper doses of ferric chloride and lime, prechlorination,  
17      conversion -- it should say "conversion" not "conversation" --  
18      to GAC filters, corrosion control, elimination of storage  
19      tanks, valve replacement, flushing in the distribution system.

20           They also made recommendations about changes to  
21      process control, proper lab operation, proper maintenance  
22      management, proper staff training, and how the water  
23      department could communicate better with its customers.

24           The whole report is in evidence, and you'll be able  
25      to look at it.

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1 And, members of the jury, this was all in one week  
2 they did all this work and all this analysis. A one-week  
3 assessment, and they provided this whole host of  
4 recommendations that no one on this table wants you to look at  
5 or talk about.

6 Again, you heard from Dr. Bellamy. This is the guy  
7 -- I mean, they want to talk about his compensation. I'll  
8 talk about his experience. This is a guy that for 40-plus  
9 years has been one of the go-to water treatment consultants in  
10 the world. He went to Iraq to set up their water treatment as  
11 part of the provisional authority there. He went to Sydney,  
12 Australia, to help when there was an issue with the water  
13 being provided to Olympic athletes.

14 He has provided water consulting here in Ann Arbor, a  
15 city that uses a small river just like Flint. And what did he  
16 tell you? He said he went through all the documents, and this  
17 kind of work is exactly what you would expect from a  
18 reasonable, competent engineer, that this was good work.

19 So with that understanding of the context of the  
20 circumstances, let's take a look at VNA's recommendations  
21 about corrosion control, because that's the first way that  
22 Mr. Maimon and Mr. Stern could establish negligence.

23 And when you look at these recommendations about  
24 corrosion control, I submit to you that their approach more  
25 than met the standard of care. It was exactly the right

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1 response to the situation at the time.

2 VNA made a careful, thoughtful set of recommendations  
3 that was fully consistent with all known science about lead  
4 corrosion. They recommended the city conduct a  
5 corrosion-control study to get the right inhibitor and the  
6 right dose. And they recommended that it be discussed with  
7 the state regulator.

8 So I'm going to go through this in some detail. But  
9 as you can see from the slide, what I'm going to do is give  
10 you six reasons, six independent reasons that you know that  
11 VNA's recommendation on corrosion control was correct.

12 I'm going to go through them one at a time and  
13 explain why the evidence shows on each of those points VNA was  
14 right. And why that means you could have confidence that on  
15 the question on your verdict form about whether or not VNA  
16 breached the standard of care when it comes to their  
17 recommendation on corrosion control, you can confidently check  
18 that box in favor of VNA.

19 So what was the recommendation? Well, we've seen  
20 this language many times. I won't read it again in full, at  
21 least. "Contract with your engineer initiate discussions with  
22 the state on the addition of a chemical."

23 Why was this the right recommendation? First, at the  
24 time -- sorry -- at the time, lead in the tap water was not a  
25 pressing issue. Based on the information they knew at the

1 time. You've heard over the course of this trial dozens of  
2 questions, if not more.

3 You've heard arguments from plaintiffs' counsel that  
4 what VNA should have been doing is they should have been  
5 jumping up and down, raising alarm bells, causing everyone to  
6 stop and pay attention to the issue of lead.

7 Well, members of the jury, that is pure hindsight.  
8 Nothing else. Because what was the data that was available at  
9 the time? The lead and copper data, the data that's used by  
10 water operators all over the country, it was clear that they  
11 were -- that the 90th percentile level for the City of Flint  
12 was 6 micrograms per liter or parts per billion. And you know  
13 that the action level is 15.

14 There was no basis to go and alarm everybody about  
15 lead. The data showed they were in compliance. The evidence  
16 didn't support doing anything else.

17 Now, this doesn't mean that VNA ignored the issue of  
18 lead. It doesn't mean that they just said, "Oh, well. We're  
19 done. Nothing to do here." No. They took a measured  
20 approach that was consistent with the available information.

21 Again, you can go back to that analogy with your  
22 doctor. You might tell your doctor when you walk in, "You  
23 know, I eat a diet that's all sugar." And a doctor will say,  
24 "Maybe you're going to have a problem with diabetes."

25 But if he tests your blood and your sugar levels are

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1 not high, what's the doctor going to do? He's going to tell  
2 you, "Okay. You don't have an issue right now, but this is  
3 something you should keep an eye on for the future, and you  
4 might be smart to think about this going forward."

5 And that's exactly what VNA did on this issue of  
6 lead. Yeah, they knew there were potential issues with the  
7 corrosive water. They knew there were some amount of lead  
8 pipes, and they knew lead could be an issue in the future.  
9 They knew it was something the city should keep an eye on and  
10 think about. But at the moment, the data showed that it was  
11 6 parts per billion, which is below the action level.

12 And it wasn't just in VNA's report that they said  
13 that. Marvin Gnagy recorded this in his notes. February 18,  
14 2015. "Corrosive water conditions exist. Discussed with  
15 plant staff and suggested potential issues with lead and  
16 copper monitoring in the future."

17 And then thinking back on simultaneous compliance.  
18 "Might need to balance pH and corrosion control with THM  
19 compliance issues."

20 They say, "Oh, Gnagy, he was only talking about red  
21 water. It's right here in his notes. "I discussed it with  
22 plant staff that they might have an issue with lead and copper  
23 in the future."

24 And it wasn't just Gnagy's notes. You heard from Rob  
25 Bincsik. Remember when the news about LeeAnne Walters first



1 came up, and they first saw they had one home with an elevated  
2 lead level? Rob Bincsik's first thought was, "Hey, this is  
3 what Marvin from Veolia mentioned to me, that we needed to add  
4 phosphate to our water to help prevent this."

5 So you have Gnagy's testimony to you that he told  
6 people about this. You have his notes that documented it.  
7 And you have Mr. Bincsik's email. And when he was here on the  
8 stand, Mr. Bincsik told you that he's confident that  
9 conversation occurred.

10 So that's the first reason. Lead in the water was  
11 not a pressing issue.

12 What's the second issue -- second reason? The second  
13 reason is you can't just take orthophosphates and dump them in  
14 the water, because that's what was done in Detroit. What do  
15 you need to do? You need to conduct a study. This was the  
16 consistent testimony of every single water expert in this case  
17 other than Mr. Humann, who I'll get to in a few moments.

18 So if that's the case, how can it be negligent for  
19 VNA to not recommend orthophosphates and instead recommend a  
20 corrosion-control study? You heard from Dr. Bellamy that when  
21 you think about issues of corrosion control, there can be a  
22 number of different chemicals that are added. Orthophosphate  
23 is one of them, but there could also be mixtures. And it's  
24 one of the basic techniques for the corrosion control. It's  
25 not the case, as plaintiffs' counsel would have it, that the

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1       only way to do corrosion control is orthophosphate.

2               You heard from Dr. Gagnon that there were 46 percent  
3       of the utilities in one study that were using some approach to  
4       corrosion control other than adding orthophosphate.

5               And so the right thing to do, what you have to do is  
6       conduct a study. That's what Mr. Gnagy recommended. They  
7       should hire an engineer and coordinate with the state to do a  
8       corrosion-control study.

9               Mr. Chen, "I did recommend. I have more information  
10      for the future."

11              And Mr. Green testified as well, the best practice  
12      would have been that they test for corrosion and everything  
13      else.

14              Everyone involved said the same thing. What you do  
15      when you have this potential issue. You conduct a study and  
16      figure out the right chemical.

17              Now, Mr. Stern really went after Dr. Gagnon and his  
18      testimony, because he, when pressed on cross-examination about  
19      whether the Flint River water was more corrosive, he said he  
20      didn't know. But I think you have to remember what happened  
21      on redirect, as well, which is he said he didn't know, because  
22      utilities don't take raw water and put it into service lines.  
23      It goes through a treatment process first.

24              So if the question is: Is this water corrosive to  
25      service lines, it doesn't matter what the raw water does.

1 That water never comes in contact with a service line. The  
2 treated water does.

3 So he said, "I don't know," because it wasn't a  
4 relevant question for him, not because he didn't know the  
5 answer or didn't -- it just wasn't a question he'd ever  
6 bothered to look at. Because what matters is the treated  
7 water, not the raw water.

8 And I would offer to you -- you saw Dr. Gagnon, did  
9 he look like someone who was unprepared or not thorough or not  
10 a real expert to you? He won all those awards, published all  
11 those papers. He was the epitome of a science nerd. He was  
12 the guy -- he's one of the world's leading experts in lead and  
13 corrosion who studied this issue and published as many papers  
14 as anybody. And been widely recognized by his peers for his  
15 expertise.

16 And what was his view? That VNA did the right thing  
17 by recommending a corrosion-control study.

18 But Dr. Gagnon said more. And this is really  
19 important, as well. And this is the third reason. Because he  
20 explained, based on his research, that if you added  
21 orthophosphate but didn't first address pH and alkalinity and  
22 didn't first address all that organic matter in the water, the  
23 orthophosphate wouldn't have done anything.

24 Those other water quality issues would have affected  
25 the way the orthophosphate works and would have prevented it

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1 from doing anything to inhibit corrosion.

2 Again, Dr. Gagnon and I have a quote from his  
3 testimony reviewing this study. He said, "We were surprised  
4 by this, would that -- with the addition of orthophosphate  
5 when organic matter was present, the orthophosphate actually  
6 had very little effect in terms of treatment additive."

7 And corrosion control is typically the last step that  
8 water would undergo in terms of treatment. You'd want to make  
9 sure all previous steps are operating properly and addressed  
10 before you get to the final step.

11 And so that was the order of VNA's recommendations.  
12 It was fully consistent with Dr. Gagnon's research and what  
13 science tells you. You have to get pH and alkalinity under  
14 control first. Remove the organic matter and then study the  
15 right corrosion inhibitor.

16 So what do you do? Implement operating programs for  
17 process control. That's to address pH and alkalinity. You  
18 convert your filters to GAC. And Dr. Gagnon explained that's  
19 how you control for organic matter. Then once you've done  
20 those things, then discuss with the state and figure out the  
21 proper corrosion control inhibitor.

22 Fourth reason, you know this was the right  
23 recommendation. You've heard testimony that orthophosphate,  
24 if it had just been added to the water might have actually  
25 caused more harm than good. You saw this in an email that

1 Mike Glasgow sent, again, right after the discovery of this  
2 LeeAnne Walters's test result.

3 He said, "I wish we could fix our problems with a  
4 corrosion inhibitor, but I'm not sure that is the case.  
5 Although most -- also, most inhibitors are phosphate-based,  
6 which may come to haunt us in the summer months as phosphate  
7 is an energy source for biological growth."

8 This is why you have to test it. You can't just take  
9 some one-size-fits-all approach and say, "Well, orthophosphate  
10 was there before. You have to add orthophosphate now."

11 And it wasn't just Mike Glasgow. We saw the same  
12 thing from the EPA, from notes that Jennifer Crooks took from  
13 the EPA of a call with Michigan regulators. First she said,  
14 "Let's not do a corrosion-control study yet," in June of 2015.  
15 The EPA was still saying, "Let's wait."

16 But then she went to say, "The idea to ask Flint to  
17 simply add phosphate may be premature. There are many other  
18 issues and factors that must be taken into account, which  
19 would require a comprehensive look at the water quality and  
20 the system before any treatment recommendation can or should  
21 be made."

22 Jennifer Crooks went on in her testimony to say that,  
23 "You have to do a study, because too much phosphate could be  
24 just as bad as not enough phosphate."

25 And what's the fifth reason? The fifth reason is

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1 that the city didn't even have authority. No matter what VNA  
2 said, to just pick a chemical, order it up, and add it to the  
3 water. They had to go to the MDEQ and get approval for any  
4 chemical change they made to their treatment. They needed  
5 MDEQ approval.

6 Why is this important? Because that's exactly what  
7 VNA recommended. "Contract with your engineer and initiate  
8 discussions with the state on the addition of a corrosion  
9 control chemical."

10 So think about this. If VNA had done exactly what  
11 Mr. Humann says they must have done, you know, thou shall add  
12 orthophosphate. The city couldn't even do it. They would  
13 have had to go to the state and seek approval. And if they  
14 did that, they'd be doing the exact same thing VNA  
15 recommended.

16 So ask yourselves, how did VNA breach the standard of  
17 care by recommending that the city do what it had to do in  
18 order to add corrosion control?

19 And in case there's any doubt, I pulled out from the  
20 transcript, these are all the witnesses who testified  
21 consistently that the city needed MDEQ approval in order to  
22 make a change to the treatment chemicals. Warren Green,  
23 Theping Chen, Marvin Gnagy, Gerald Ambrose, Adam Rosenthal,  
24 and Miguel Del Toral.

25 And finally, my last reason why I think it's clear

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1        why you can have confidence in concluding that VNA's  
2        recommendation on corrosion control was correct is because  
3        Mr. Humann is not a credible witness.

4                And I don't mean to say -- sometimes people say  
5        "credible" and it means they're suggesting he's lying. I'm  
6        not saying that. I'm just saying his testimony is not worthy  
7        of belief by you or worthy of being credited.

8                And why is that? Well, some of you may be thinking,  
9        and I think Mr. Maimon set it up this way a couple of times.  
10       There's an expert on one side who says this is the standard of  
11       care. There's an expert on the other side who says that it  
12       isn't. We're not experts. How are we supposed to know who's  
13       correct?

14               Well, the answer isn't you just throw up your hands  
15       and say, "Well, nobody knows." You take a look at the  
16       information before you, at the evidence that's been presented.

17               And I point first to the breath of Dr. Bellamy's  
18       experience compared to Mr. Humann's. As I said, Dr. Bellamy  
19       spent 45 years as one of the world's leading water quality  
20       consultants for over a hundred different water utilities,  
21       tackling the most challenging problems all over the world. He  
22       set up water systems in Iraq and Australia. I went through  
23       that already.

24               Mr. Humann, there is no evidence that he's ever run a  
25       water plant, he's ever done consulting work outside of Long

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1 Island or maybe New Jersey. Yeah, he's the CEO of a company.  
2 Did he talk to you about his vast experience consulting with  
3 water systems in different parts of the world? I don't think  
4 he did.

5 Similarly, I point to the lifetime of research that  
6 Dr. Gagnon has done on issues of lead, corrosion, and water  
7 treatment. One of the leading experts in the scientific  
8 community. I'd point you to how credible and detailed both  
9 Dr. Bellamy and Dr. Gagnon were. How they supported all of  
10 their opinions with data and with evidence. How they answered  
11 all the questions that were asked of them on  
12 cross-examination, even when Mr. Maimon did his best to try  
13 and trip them up.

14 And for all those reasons that would be enough of a  
15 reason to credit Dr. Bellamy and Dr. Gagnon and not to credit  
16 Mr. Humann.

17 But in this case, you don't even have to go through  
18 that analysis, because there's another reason that you know  
19 Mr. Humann's opinion is just not worthy of belief. And that's  
20 because he didn't look at anything. He told you he read one  
21 document, one document to form his opinion about VNA. Their  
22 final report. That's it.

23 You've been here for five months and more looking at  
24 tons of documents, hearing from lots of witnesses, analyzing  
25 everything. He looked at one thing.



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1           He didn't look at Marvin Gnagy's handwritten notes  
2       where he indicated that he spoke with plant staff about  
3       corrosion control. He didn't look at Rob Bincsik's email  
4       where Mr. Bincsik said, "Yeah, lead corrosion. This is what  
5       Marvin from Veolia was talking to me about."

6           He didn't look at the pH or alkalinity or the organic  
7       matter issues and how that played into what VNA was  
8       recommending. He said he wasn't asked to even consider water  
9       chemistry. He didn't review the lead and copper data.

10          He never spoke to or read the depositions of any City  
11       of Flint officials. He never spoke to or read the depositions  
12       of any MDEQ officials.

13          When you put that all together with the other experts  
14       are telling you, I submit to you, members of the jury, it's  
15       clear you should credit Dr. Bellamy and Dr. Gagnon, and you  
16       should not credit Mr. Humann.

17          Now, you heard a lot from plaintiffs' counsel today  
18       that VNA's recommendation that, you know, how could  
19       Dr. Bellamy have thought this was a recommendation about  
20       corrosion control for lead when Marvin Gnagy admitted himself  
21       that it was about red water and polyphosphates?

22          Well, I have the excerpt from the transcript from  
23       page 5245 where Mr. Gnagy said very clearly, "I recommended  
24       polyphosphate to deal with red water. But, you know, I also  
25       recommended or talked about a phosphate chemical that could

1 help with future lead and copper levels in the distribution  
2 system."

3 The two are not mutually exclusive. The fact that  
4 you're talking about in one section of the report, talking  
5 about polyphosphate for red water doesn't mean that you're  
6 also not talking about a corrosion-control study to deal with  
7 lead and copper. Two things can be true at the same time.  
8 And that's what Mr. Gnagy testified here to you.

9 But even more importantly, even more importantly than  
10 what Marvin Gnagy said about what was in his mind when he  
11 wrote something down, the evidence is clear that the people he  
12 was communicating to understood this to be a recommendation  
13 about lead and copper corrosion.

14 We've already talked about Rob Bincsik. You saw his  
15 email, right? As soon as he hears about the lead result at  
16 LeeAnne Walters's house he says, "Wait. This is what Marvin  
17 from Veolia was talking to me about."

18 You also saw for Howard Croft, this is a key document  
19 in this case. In September of 2015 -- right? -- the treasury  
20 department asks Mr. Croft, "Why didn't Veolia advise the city  
21 about potential for elevated lead levels when using Flint  
22 River water?"

23 What does he say? He says they did. They did make  
24 corrosion control one of their recommendations. Their  
25 commissioned scope of work was to focus on TTHM concerns, but

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1 they did make corrosion control one of their recommendations.

2 And he says that in response to a question about lead.

3 He knew that VNA was making a recommendation for a  
4 corrosion-control study about lead. Rob Bincsik knew. What  
5 does it matter what kind of arguments Mr. Maimon can make  
6 about what the wording of the report and what that would have  
7 communicated? The people it was being sent to understood what  
8 it was saying.

9 So for the first claim of negligence, the immediate  
10 implementation of orthophosphate corrosion inhibitors, for all  
11 of those six reasons, you can scratch that off your list.  
12 There's no basis to conclude VNA was negligent on that.

13 So what about the second point? What about the  
14 return to receiving water from Detroit? Well, here I submit  
15 plaintiffs' counsel doesn't fair any better. And that's for  
16 the simple reason that from all the evidence you've seen --  
17 and I'm going to review it -- there's simply nothing anybody  
18 could have said in February of 2015 that would have led the  
19 City of Flint to return to Detroit.

20 Flint had taken that option off the table. And it  
21 was entirely appropriate for VNA to follow its client's  
22 instructions on that issue. The standard of care is for VNA  
23 to answer the question it was asked. And the question it was  
24 asked was do a top-down assessment in your one week of the way  
25 we're treating Flint River water.

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1           They weren't asked, "Hey, evaluate which one of these  
2           water sources is better." They were asked, "Evaluate our  
3           treatment of Flint River water," and that's what they did.

4           Now, here I have three reasons or three arguments.  
5           First, as I said, the City of Flint took DWSD off the table.  
6           Second, as I said, VNA wasn't engaged to evaluate a return to  
7           DWSD. And, third, that even when VNA tried to suggest a  
8           return to DWSD, it was squarely rejected.

9           How do you know that Flint had taken a return to  
10          Detroit off the table? Well, every witness in this case made  
11          this clear. Darnell Earley was the Flint emergency manager at  
12          the time, and he testified based on the video deposition about  
13          a return to Detroit. It was not feasible, because the city  
14          didn't have any money.

15          Gerald Ambrose, in his video deposition, testified  
16          that he stated on -- or he were asked and he stated on many  
17          occasions that the \$12 million that was being saved by not  
18          purchasing the water from Detroit was one of the reasons not  
19          to return.

20          And I want to pause for a minute on the logic of  
21          that. Because I think what you see and what you understand  
22          when you think about it is why the emergency managers and the  
23          City of Flint were so wedded to their decision. Because as  
24          we've said, they knew that they were coming -- in two years,  
25          they would be joining the KWA.

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1           And to be ready to join the KWA, the plant needed  
2 massive upgrades. And they had no ability to finance those  
3 upgrades. So how did they finance it? By taking the money  
4 that they had been using to pay Detroit for water and saving  
5 that money to upgrade the plant while they just got water out  
6 of the Flint River.

7           That was the game plan. That was the decision. And  
8 there's no reason to think that that had changed or that  
9 anything was going to get them to come off of that.

10           In fact, I can go through just in the same time  
11 period, January and February of 2015, seven different times,  
12 there was a suggestion made to return to Detroit, and it was  
13 squarely rejected. This is the month before VNA was arriving  
14 in Flint. You had January 9, 2015, Emergency Manager Earley  
15 issued a public statement the City of Flint can ill afford to  
16 switch courses at this time. That's VNA Exhibit 784.

17           You have notes from a January 12, 2015, meeting that  
18 Mayor Walling attended. "The game plan is not changing." You  
19 have a document, an email from Dennis Muchmore from the same  
20 period of time January 19, 2015. "This would be pretty  
21 complicated to do now. A lot of money has been invested to  
22 this point."

23           And then you have the testimony of Sue McCormick from  
24 Detroit. She sent this letter in the midst of the crisis when  
25 everyone was at each other's throats saying, "Hey, we'll let

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1 you come back with no reconnection fee and no long-term  
2 contract."

3 One of the city council members invited her to come  
4 and present that. And what happened? Gerald Ambrose called  
5 her on the way to the meeting and said, "You're not coming.  
6 You're off the agenda." She turned around and was about to  
7 leave until the city council called her and again and said,  
8 "No, come back. I want people to hear about this option."

9 And she was put at the end of the meeting and was  
10 never taken seriously and never got a response.

11 You even saw an email from February 28, 2015, between  
12 Emergency Manager Ambrose and a member of the city council  
13 discussing this question of a return to Detroit. And Ambrose  
14 made perfectly clear no matter how many times you send it to  
15 me, it doesn't change the cost or my mind. This was taken off  
16 the table.

17 You also saw the emergency manager put out a  
18 statement, a press release, "Spending an extra \$12 million on  
19 Detroit water is incomprehensible when Flint water is just as  
20 safe." Incomprehensible.

21 They made no secret of it. It was reported in the  
22 press. Here's an article that's in evidence. VNA Exhibit  
23 2824. "Flint Emergency Manager Says There Are Two Big Reasons  
24 Not to Reconnect to Detroit Water."

25 And you even heard this testimony from Duffy Johnson,

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1       which I have to say was pretty -- it might have come by fast.  
2       It was a while ago. But it was pretty compelling. He was  
3       20-plus year employee of the City of Flint Department of  
4       Public Works.

5               And he -- because he was anticipating a return to  
6       Detroit might happen, he instructed his staff, "Hey, get  
7       ready. We might have to go back to Detroit." And what  
8       happened when Ambrose heard about it? He left his job, and he  
9       said that was a major reason why he left. Because it was  
10      overturned by Ambrose.

11             And, you know, you heard the same thing from Marvin  
12      Gnagy on this question of -- well, I'll get to that about  
13      incomprehensible. It's the same work Marvin Gnagy heard when  
14      he tried to raise the question of returning to Detroit to  
15      Mr. Ambrose.

16             Now, given this clear evidence that the City of Flint  
17      had firmly decided it needed the \$12 million to upgrade the  
18      plant. It wasn't interested in returning to Detroit. Was it  
19      -- does it make any sense to think that the city wanted to  
20      hear VNA's opinion on this subject?

21             Do you really think the City of Flint was engaging  
22      VNA to answer the question of, "Hey, what do you think about  
23      returning to Detroit?" Ambrose made clear this is -- no  
24      matter how many times you bring it up, my mind's not changing.

25             And remember the testimony of Bill Bellamy, again, he

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1 said as a water quality consultant, there's been plenty of  
2 times in his career that he's been asked to evaluate, "Hey,  
3 should we use one water source or another?"

4 That's a kind of analysis that water quality  
5 consultants do. And that was not this. That's not what VNA  
6 was hired to do.

7 You also heard from Marvin Gnagy, "They specifically  
8 told us returning to Detroit isn't an option. We don't want  
9 you spending time and effort on something we already know."

10 Now, again, the point of this is not to say that they  
11 were never going to go back to Detroit. Obviously, we know  
12 that they did six months go.

13 The point of this is to say, "Was VNA negligent?"  
14 Did they breach the standard of care when they're told  
15 directly by their client, "We don't want your opinion on a  
16 return to Detroit."

17 Again, Theping Chen, we were never asked to do that  
18 kind of evaluation. The source comparison. They had already  
19 had another consultant that did the exact same study comparing  
20 to the source before.

21 And I put a picture here, because I think it's  
22 helpful to think of an analogy. And I have a picture of a  
23 car. Imagine you were driving a car, and it was working fine.  
24 Got you where you needed to go. And then you decided, "You  
25 know what? I need to save some money, because I have some



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1 other things I need to spend money on."

2 So you sell that car and you start using instead an  
3 old beat up car that has lots of problems. What do you do?  
4 You take that car to a mechanic and you ask the mechanic,  
5 "Hey, are there repairs that we can do to get this car to  
6 work? Can you fix up this car? Can you repair it? Can you  
7 make it work so that it gets me where I want to go?"

8 Would you expect the mechanic to turn around and say,  
9 "You know, you still have an option. You can go buy your old  
10 car back"? Of course not. You would know that you could do  
11 that. You had that car, but you needed the money for  
12 something else.

13 The question you're asking this mechanic is, "Can I  
14 make this car work?" And that's the question the City of  
15 Flint was asking VNA. "Can we treat the Flint River water?  
16 Can you review our processes and give us recommendations to  
17 make this work?"

18 Not, "Can you go back and use the water we were using  
19 before?" They already knew that. Everybody knew that.

20 And so what's remarkable here is not that VNA  
21 followed its client's instruction. What's remarkable here is  
22 that even in the face of all of that, even in the face of all  
23 that constant rejection of the idea of moving back to Detroit,  
24 even when you understand the question VNA was asked, they  
25 still made sure they brought the option up to Mr. Ambrose.

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1           And you heard, Marvin Gnagy testified. He mentioned  
2     it to him that, you know, "Going to Detroit is always an  
3     option, and he just told me it was incomprehensible." He told  
4     me at the end, "Stick to your scope if you want to get paid."

5           Now, plaintiffs' counsel, with their  
6     cross-examination, I think suggested that maybe this  
7     conversation didn't happen the way Mr. Gnagy remembers it.  
8     And they suggested, "Well, you know, he didn't have it in his  
9     notes. He didn't write it down, so I guess it didn't happen."

10          But, members of the jury, you saw Mr. Gnagy. He  
11     didn't need notes to remember this conversation. He  
12     remembered it. And in light of everything else you've seen  
13     where Mr. Ambrose, you know, said, "No matter how many times  
14     you tell me, it's not going to change my mind," is there any  
15     reason to question Mr. Gnagy's credibility on this point, that  
16     he raised the option of returning to Detroit and was told,  
17     "Stick to your scope"?

18          And finally, if you're comparing who's more credible,  
19     Mr. Gnagy or Mr. Ambrose, is it the guy who came and took the  
20     stand and testified under oath and answered all of the  
21     questions? Or is it the guy who took the Fifth, Mr. Ambrose,  
22     and said that because he's been charged with crimes, he  
23     doesn't want to come to answer questions because of fear of  
24     self-incrimination?

25          The answer is clear. You know Mr. Gnagy was telling

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1     you the truth about this. You know he identified returning to  
2     Detroit as an option. And you know the city wasn't  
3     considering it.

4             So that's so much for their second claim of  
5     negligence that VNA breached the standard of care by failing  
6     to recommend the return to receiving water from the Detroit  
7     water and sewerage department.

8             Now, when I listened to some of the arguments from  
9     plaintiffs' counsel, the phrase that came in my mind is the  
10    phrase "grasping at straws." And I thought about that the  
11    other day, and I wondered where that phrase came from because  
12    grasping at straws didn't make sense to me, and I looked it  
13    up.

14            It comes from a longer expression from, I think, you  
15    know, Medieval England or something where they said, you know,  
16    a drowning man will grasp at straws. And the idea was that  
17    someone who's drowning in a river or a lake might reach for  
18    whatever straws or reeds are on the side of the river to pull  
19    himself up and prevent himself from drowning.

20            And here I submit to you that Mr. Maimon and  
21    Mr. Stern, they're not grasping at straws. They're doing the  
22    21st century version. They're grasping at emails. They are  
23    saying, "We can't engage on these arguments. There's all  
24    these reasons why VNA's recommendations were correct. We  
25    can't engage on that, so let's just put up a bunch of emails

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1 and try to focus on that. Let's grasp at those straws."

2 Now, let's start with their greatest hit. Their  
3 absolute favorite. The apple of their eye. And this is Rob  
4 Nicholas's February 9 email in which he said, "Yep, lead seems  
5 to be a problem."

6 They love this email. How do I know? Because we  
7 went through the transcript, and we counted. And they  
8 presented this email 138 times over the course of this trial.  
9 One email. 138 times. That's how much they wanted you to see  
10 that Rob Nicholas said, "Lead seems to be a problem."

11 And you know what? I don't mind that they showed  
12 that email. I wish they didn't do it 138 times. Because that  
13 email says nothing that undercuts any of our arguments about  
14 what VNA did.

15 What was that email? It was a response to a  
16 newspaper article that reported on a high lead result at  
17 UM Flint. A newspaper article. Not some analysis that VNA  
18 did. Not some test. It was a newspaper article from which he  
19 said, "Huh, lead seems to be a problem."

20 So what did they do? They investigated, and they  
21 concluded that it wasn't a problem. It was something to keep  
22 your eye on that might be a future problem, but it wasn't a  
23 problem then.

24 One employee, who by the way was not an engineer,  
25 thought this seemed to be a problem. He passed it on, and the

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1 engineers investigated. This is the email they showed you 138  
2 times.

3 And I have to say I thought one of the most revealing  
4 in a way moments of this trial came on this point when  
5 Governor Snyder was presented by video. And you've heard,  
6 again, Governor Snyder took the Fifth, and that's why he  
7 didn't testify.

8 But at some point prior, he sat for a deposition.  
9 And he was deposed in this case. And Mr. Stern, on behalf of  
10 his clients, got to ask him questions under oath. Did  
11 Mr. Stern ask him about his oversight of the MDEQ and all of  
12 the MDEQ's failures or his interactions with the emergency  
13 managers?

14 Did he ask him about his failed effort to broker a  
15 deal between Detroit and Flint that might have prevented this  
16 whole crisis from happening? Did he ask him about his meeting  
17 with the Flint pastors in July where they were trying to press  
18 their concerns about lead in Flint's tap water?

19 Did he ask the governor about all of his inaction  
20 over the year and a half of this crisis when he didn't do  
21 anything to fix it? No. He showed him Rob Nicholas's email.  
22 And he said, "Do you see here VNA said, 'Lead seems to be a  
23 problem'? Did anyone from VNA call you."

24 Give me a break, members of the jury. They had the  
25 governor of the state under oath. And they had the

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1 opportunity to ask him questions, to get to the heart of what  
2 happened in the Flint Water Crisis. And they chose to show  
3 him Rob Nicholas's email that doesn't really prove anything.

4 What does that tell you? Does that tell you that  
5 plaintiffs' counsel are trying to do a real search and inquiry  
6 of what happened in the Flint Water Crisis? Or are they  
7 grasping at straws to try to fix blame where it doesn't belong  
8 on VNA?

9 Let's talk about their other greatest hit. This  
10 email where Bill Fahey wrote or Mr. Nasuta wrote, "If the best  
11 technical decision is to go back to the City of Detroit, we  
12 should not be afraid to make that call."

13 You know this was written by Mr. Nasuta who was  
14 saying if it's the best technical decision, not that he  
15 concluded that it was.

16 And then you have Theping Chen, who talked about his  
17 email -- I'm sorry. I thought it was here. His email from  
18 February 2, which they talked about in their closing argument  
19 where he said, "Returning to Detroit might be the best  
20 technical option to satisfy the activists."

21 Again, you've seen that email multiple times. It was  
22 written on February 2, 2015. VNA's contract wouldn't be  
23 signed until ten days later. In the middle of the night,  
24 Mr. Chen was looking at some news articles and said, "Huh,  
25 this seems to be what the activists are all asking for.

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1 They're asking for a return to Detroit. That might be the  
2 best technical solution."

3 But he learned soon after from the city that that was  
4 not going to be an option. And you see here his testimony  
5 where he repeated multiple times that he was given a specific  
6 direction that that was outside their scope.

7 And then you have Mr. Gnagy's mistake that they focus  
8 on. Mr. Gnagy's mistake. What was his mistake? That same  
9 February 9 article about elevated lead at UM Flint. He asked  
10 for the data from the city. The city sent him data, and he  
11 assumed the city had sent him all the data.

12 So he analyzed it. He did his own calculations. He  
13 didn't go back and check and see that actually if you read  
14 down in the article, UM Flint had done three draws of water,  
15 and they'd only sent him the results from one. That was his  
16 mistake. He trusted the City of Flint.

17 Now, I will say to you they want to make a big deal  
18 about his mistake, fine. I would offer to you that testimony  
19 shows how credible Mr. Gnagy was. When he made a mistake, he  
20 admitted it. "I made a simple mistake." It doesn't undermine  
21 any of his recommendations about corrosion control.

22 It doesn't undermine any of the other work he did  
23 that met the standard of care. They pointed out a mistake,  
24 and he admitted it.

25 Finally, let's talk about this statement the water is

1 safe. I honestly -- after this much time, I don't have the  
2 patience to go through this again. I'll just say the slide  
3 says right what it says. "Safe equals compliance with state  
4 and federal standards and required testing."

5 They put that right on the slide. And you know from  
6 the earlier testimony that the 90th percentile was 6 parts per  
7 billion, which was in compliance with state and federal  
8 standards. So this statement was true at the time.

9 And one last thing, I'll just remind you. You saw  
10 Miguel Del Toral by video, I don't know, a couple of weeks  
11 ago, and he was asked about statements like this. He said,  
12 "People say this all the time. That's how people in this  
13 industry work. If you're at the action level or below, they  
14 say the water is safe."

15 The bottom line here is that by looking at these  
16 emails, plaintiffs' counsel had not met their burden of proof  
17 of showing that VNA failed to meet the standard of care. And  
18 I want to say one other thing, because after all this time, I  
19 still don't really understand what Mr. Maimon and Mr. Stern  
20 think happened here.

21 You've heard a lot about upsells. You've heard a lot  
22 about, well, VNA knew lead was a problem, but they didn't say  
23 something. I don't really know how that fits into this  
24 negligence case. Because their claim is, you would think it  
25 would be, "Well, they didn't know about lead," or, "They



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1 overlooked it." That's what would be a negligence claim.

2 They're not saying that.

3 They're saying no, no, no. They knew about lead, but  
4 they pulled their punches and didn't say it, because they  
5 wanted to upsell.

6 Well, members of the jury, use your common sense. Is  
7 that how upsells work? When you say your car to be repaired  
8 at the shop, do you worry about what the repairman's going to  
9 tell you? He's going to tell you that there's -- aren't any  
10 problems, or are you worried that there are a lot of problems?

11 Because people who are upselling try to overstate  
12 problems. They don't understate problems. It's about  
13 overstating the problem you can get hired to do more work, not  
14 by understating it.

15 So, again, upsell is a -- I guess they found it in  
16 some emails, but I just don't understand the logic of it, and  
17 I think you should ask yourselves what it is that they are  
18 trying to say really happened here.

19 So for all of these reasons, when you turn to that  
20 question on your verdict form, did VNA breach the standard of  
21 care, the answer clearly is no. And you can have confidence  
22 in reaching that answer.

23 I just have here some slides -- sorry -- that  
24 Mr. Fahey also said they were trying to grow their business.  
25 No one made any secret about that.

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1 I'll skip ahead.

2 The next point. After you conclude, as I think you  
3 should, that VNA was not -- did not breach the standard of  
4 care, if you answer that question in favor of VNA, then at  
5 that point, at least as it relates to VNA, the case is over.

6 If VNA didn't breach the standard of care, you have  
7 nothing left to consider for VNA. And, again, I don't see how  
8 you can conclude otherwise given this evidence.

9 But if you conclude that VNA did breach the standard  
10 of care, you then have to turn to the second question of  
11 whether these kids are injured.

12 Now, they call this a pivot or  
13 choose-your-own-adventure. I don't know. Follow the judge's  
14 instructions. It goes down the same order. First analyze did  
15 they breach the standard of care. If the answer is, "Yes," go  
16 on. If the answer is "No," you're done. I didn't write the  
17 choose-your-own-adventure. That's what the law requires you  
18 to do.

19 So let's talk about the evidence of injury. And,  
20 again, here the burden of proof lies entirely with the  
21 plaintiffs. In this part of plaintiffs' case, I will submit  
22 really has one problem after another. One problem after  
23 another that they did their best to try and solve with what I  
24 think are really creative arguments, but which ultimately  
25 don't hold up.

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1           So let's start with the most basic aspect of this  
2 claim. Were these children, were their clients exposed to  
3 lead in Flint's drinking water? And as I said, we're not  
4 denying there was a water crisis. Our claim is there was a  
5 water crisis. But whether there's evidence it was a lead  
6 crisis is a different story. We all know by now, I think  
7 every witness this the case has been consistent. The water  
8 coming out of the treatment plant did not have lead in it.

9           Lead comes into the equation because of the way that  
10 water interacts with lead service lines, which causes the  
11 scale to slough off of the service lines, and that's where  
12 lead comes from.

13           And we know now that Rob Bincsik, the service center  
14 manager, where he previously thought and he had that card  
15 catalog that you saw a picture of, you previously thought,  
16 "Oh, there's lead lines everywhere."

17           We now know from this FAST Start data that that SWAG  
18 that he called it, his scientific wild ass guess that it was  
19 way off.

20           We know from the FAST Start Program. Now, what is  
21 this? You heard from Dr. Gagnon the FAST Start Program is a  
22 program that was arraigned by the State of Michigan to replace  
23 every single lead service line in the City of Flint. And they  
24 talked about the Pieper study. The Pieper study was -- you  
25 heard the testimony.

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1           The Pieper study was an estimate based on  
2       extrapolations of where -- of how many lead service lines  
3       there were that was done before the FAST Start data was  
4       available. The FAST Start data, there's no need to  
5       extrapolate. There's no need for models. They actually dug a  
6       hole in the ground and looked at the pipes and saw which ones  
7       were lead.

8           And what did they conclude? You heard from  
9       Dr. Gagnon. If you just take the number of lead pipes and  
10      divide it by the total number of service lines in the city, it  
11      comes out to about 16 percent. 16 percent. That's one out of  
12      six.

13           Now, their burden of proof is to prove that it's more  
14      likely than not. More likely than not that their clients  
15      consumed water with lead in it. Ask yourselves, if it's one  
16      out of six that had a lead service line, how have they met  
17      their burden? How could they show it's more likely than not  
18      when five out of six did not have a lead service line?

19           Well, here's their way to try to solve that problem.  
20      They point to the testimony of Dr. Bithoney. And when you  
21      look at Dr. Bithoney's testimony on this point, I submit to  
22      you it's really -- when you really get down to it, it's a lot  
23      of smoke and mirrors. It's fancy words like "geomapping."

24           But when you get down to it, what Dr. Bithoney did,  
25      he didn't do any testing of the equal homes that these kids

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1 lived in. He can't tell you that any of them lived in a home  
2 with a lead service line.

3 Let me pause.

4 They also put up these school reports from the MDEQ  
5 about each of the schools. And you remember these reports  
6 came in. There was no witness to explain them. They just  
7 came into evidence. Look at those reports. Yeah, they have  
8 some rooms in those schools that had elevated lead levels, but  
9 the vast majority, like 80 percent of them did not.

10 So, again, that doesn't prove that any of these kids  
11 were exposed to lead in their drinking water.

12 Dr. Bithoney concluded based on his statistical  
13 generalizations that in his words, it was very likely that the  
14 water consumed by Emir Sherrod, Aundreya Teed, and Daylaana  
15 Ware was contaminated with lead, and it was possible that the  
16 water consumed by Riley Vanderhagen was contaminated with  
17 lead.

18 But other than telling you his conclusion, he really  
19 didn't show you how he got there. He said he did geomapping,  
20 looked at zip codes. How he did it? A little mysterious. So  
21 let's look at some of the statistics he presented to you. He  
22 said -- I'm picking Daylaana Ware for an example. But the  
23 same analysis can be done for all four of the children. He  
24 said, "Well, she lived in a home" -- or lived in a zone or a  
25 ward where 18 percent of the water sampled had -- that was

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1 collected exceeded 15 parts per billion of lead.

2 And that was on the slide he showed you. 18 percent  
3 exceeded. He had to admit on cross-examination that that  
4 meant that 82 percent did not exceed the action level for  
5 lead. He also said he based it on the estimated percentage of  
6 children in the ward who had elevated blood lead levels and  
7 that it increased in her ward by 350 percent after the water  
8 source switch. 350 percent increase. Sounds like a lot.

9 But he had to admit on cross-examination that it  
10 increased from 1 percent to 4.5 percent. And don't be  
11 confused, that's not the blood lead level. That's the  
12 percentage of children in that ward with elevated blood lead  
13 levels. It went from 1 percent to 4.5 percent, which means  
14 95.5 percent did not have elevated blood lead levels.

15 And he tries to tell you, "Well, it went up by  
16 350 percent."

17 He said that 42.7 percent of the pipes in this block  
18 group were made of lead, galvanized, or unknown materials.  
19 Again, not acknowledging, that means that more than half were  
20 not. He also looked at the median year the structure in the  
21 block -- the structure in that block group, the homes were  
22 built. And he said that lead-containing pipes were used  
23 during that time. And he had to admit that lead paint was  
24 widely used during that time, as well.

25 You know, I loved it when during plaintiffs'

1 counsel's argument, they said, "Oh, Dr. Bithoney, he made  
2 clear, when you hear hoofbeats, think of horses. Don't think  
3 of zebras."

4 But, members of the jury, you still have to see the  
5 horses. You still need evidence. Here it seems like  
6 Dr. Bithoney heard some hoofbeats and said, "Stop there.  
7 That's enough, because it's not a zebra."

8 So there's no evidence, no direct evidence of lead  
9 exposure. How else did Mr. Maimon and Mr. Stern try to get  
10 around this problem? Well, they tried to say, "Well, they  
11 must -- if we can't prove directly that they had lead in their  
12 water, we can show that they have lead in their bodies, and  
13 that lead must have come from somewhere, and that somewhere  
14 must have just been the water."

15 And that's essentially their chain of reasoning, but  
16 that doesn't hold up either.

17 To begin with, not one of these four children, not  
18 one of them, has ever had an elevated blood lead level. Not  
19 one of them not ever. This is a chart that Dr. Gaitanis  
20 showed you that chartered all the blood lead results that we  
21 have for these four children. And you see Daylaana Ware on  
22 the left side, her highest blood lead readings were before the  
23 Flint Water Crisis even began in 2009 and 2010.

24 You see Riley Vanderhagen had blood lead readings at  
25 the end of 2015 and the beginning of 2016. The first one was

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1 within the national average. And the second one was slightly  
2 above it. The other two readings are within the national  
3 average. And then these others on the dotted line on top were  
4 where it could not be detected.

5 And you can see it's 3.3, because that's the  
6 detection limit for the test. So no one really knows if it's  
7 anywhere between 0 and 3.3. We just know it's less than or  
8 equal to 3.3.

9 So not one of these children has ever had an elevated  
10 blood lead level. And make no mistake, every witness in this  
11 case, including Dr. Bithoney, including Dr. Specht, they all  
12 said the standard way of measuring lead exposure is through  
13 blood lead.

14 Not one of these children ever had an elevated blood  
15 lead level. Sounds like a problem for plaintiffs' counsel.  
16 Sounds like a problem for their case.

17 Well, they've got a way around that problem. They  
18 say, "No, no, no. Half-life. Half-life. We just didn't get  
19 the tests in time, and so there's no way to know what the  
20 blood lead levels were, because the blood lead was really  
21 there, but it just kind of disappeared like magic."

22 And you heard from Dr. Gaitanis that the medical  
23 literature does not support that theory. He explained that,  
24 yeah, there might be some evidence that for an acute exposure  
25 if someone has a one-time exposure to lead that there will be



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1 a short half-life where it goes away but that the evidence  
2 shows that for chronic long-term exposures, it lasts for much  
3 longer.

4 And putting aside the technical literature that  
5 Dr. Gaitanis talked about, again, use your common sense.

6 Plaintiffs' counsel will have you believe, based on  
7 the testimony, that Riley Vanderhagen was drinking three or  
8 four glasses of water a day throughout the Flint Water Crisis.  
9 Yet in 2015 and early 2016, her blood lead levels were still  
10 well below the CDC reference level.

11 When was the time for this magical half-life to take  
12 effect? When did the half-life cause the lead to disappear?  
13 She's drinking water that whole time, or so they say, and the  
14 blood lead is not elevated.

15 Okay. So they don't have blood lead. So what do  
16 they do? They turn to bone lead. And here this was -- this  
17 is obviously a critical issue in the case. And I want to be  
18 very clear about this. You did hear that there is a KXRF  
19 device, a stationary x-ray device used in two hospitals to  
20 measure for bone lead and that those measurements have been  
21 reliable.

22 But you also heard about Dr. Specht and his pXRF  
23 device. And I want to suggest to you that the evidence is  
24 clear the pXRF is not reliable. Now, they said -- well, they  
25 didn't have a witness that said this. I'll get to that in a

1 moment.

2 But before I even do that, I can't resist again  
3 reminding you of one piece of testimony, which is that  
4 Dr. Specht, when he was here testifying, I have right from the  
5 transcript. He said, "The pXRF is akin to a Star Trek  
6 Tricorder," or something like that.

7 Again, not my words. This is Dr. Specht who compared  
8 it to a Star Trek Tricorder. And I will admit I'm not really  
9 a Star Trek guy. But I went and tried to look up what a  
10 Tricorder was, and it's a device that they used on the show to  
11 sort of magically detect medical issues.

12 Members of the jury, that's an apt metaphor, because  
13 this device is science fiction. The pXRF device is not  
14 referenced in any lead exposure guidelines written by the NIH,  
15 the CDC, or any pediatric medical societies. It's not  
16 mentioned in any major textbooks of pediatrics regarding lead  
17 evaluation.

18 It doesn't have proper normative data or control  
19 data. It's never been validated by an outside laboratory.  
20 And the results cannot be replicated.

21 I want to go through this in a little more detail,  
22 because I think it's really important. It's really the heart  
23 of their case.

24 Why has this device not been replicated by other  
25 labs? Well, you heard from Dr. Gaitanis. You heard he said

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1 lead -- sorry.

2           You heard he said -- he uses some proprietary cast  
3 that nobody else has access to, and, therefore, it can't be  
4 tested.

5           You heard that Dr. Specht has done four studies to  
6 try and validate the measurements he gets from his pXRF  
7 device. He had one study on lead poisoned children I think in  
8 China who had very elevated lead levels above 20. And what he  
9 found was that for those children, the device seemed to work  
10 and give reliable readings.

11           But for the children who did not have elevated blood  
12 lead levels, the device was not reliable. It didn't correlate  
13 with the KXRF.

14           So that one study on the Chinese children. He also  
15 tested it, I think, on a group of adults, I think, in Canada.  
16 And there, again, we know adults bones are very different from  
17 children's bones, so I think even he didn't think that was  
18 full validation. And he tested it on dead birds. That's it.  
19 It has not been validated.

20           Now, Mr. Stern says, "Oh, it's new, a new  
21 technology." And I remember there was a little back and forth  
22 between him and Mr. Kent about, you know, microwaves being  
23 invented and Kitty Hawk. And I stayed out of it as I tried to  
24 do throughout the trial on those kind of things.

25           But I thought about it as I was preparing for this

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1 closing statement. And it said yeah. There was a day when  
2 there was a first airplane, right? Everyone -- everything has  
3 to be done for the first time once. But if you were standing  
4 at Kitty Hawk with the Wright brothers, and they said, "Come  
5 on. Hop aboard. I'm sure it will fly," would you jump in?  
6 No. You'd wait to see that it's validated. You'd wait to see  
7 that it's reliable.

8 Here what Mr. Maimon and Mr. Stern are asking you to  
9 do, they're asking you to jump on something that's never been  
10 validated and something that isn't reliable.

11 And what else? We don't each know what these numbers  
12 mean. Because, for example, Dr. Specht put his Tricorder, his  
13 pXRF up against one of the plaintiffs legs. I think it was  
14 Riley Vanderhagen, and he said, "Oh, she had a bone lead level  
15 of 9."

16 Now, this, again, has no relationship to the blood  
17 lead levels. This is a different number. Bone lead of 9.  
18 And he said, "That's substantial or significant."

19 So the obvious question, "Well, what would a child  
20 who wasn't exposed to lead have in their bones? How do I  
21 compare that and know what this number is really telling me?"  
22 He doesn't know. He's never done a control group. Nobody  
23 knows. Nobody has ever used this device besides Dr. Specht.

24 There's no reference values like you had for the CDC.  
25 There's nothing. There's just Dr. Specht, and we're being

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1 asked, essentially, to take his word for it.

2 And finally, the last thing I'll say about  
3 Dr. Specht. Even if you credited his device, even if you  
4 thought this device actually showed you something about bone  
5 lead, it can tell you nothing about how or when the lead got  
6 into those bones.

7 It is reflecting lifetime exposure to lead. It's not  
8 telling you what lead was consumed during the Flint Water  
9 Crisis. It's telling you over the whole life of this person,  
10 this is where lead came from. And it can't tell you when it  
11 got there.

12 And this is critically important for VNA, because we  
13 only got there in February of 2015, and their burden is to  
14 show that there was lead exposure after that.

15 Dr. Specht tells you nothing from nothing about when  
16 the lead got into these bodies, and it can't tell you anything  
17 to show that it happened after VNA arrived.

18 When did the lead get there? Hard to say. Because  
19 we know from Dr. Gaitanis that lead is ubiquitous in our  
20 environment. I remember Dennis Muchmore, the governor's  
21 former chief of staff. He said the same thing when he was  
22 here just a few weeks ago. Everyone in this room has lead in  
23 their bodies.

24 And we also know from this document that came into  
25 evidence, VNA 1829, the notice the city sends out to consumers

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1 that the EPA estimates that 10 to 20 percent of human lead  
2 exposure may come from drinking water. 10 to 20 percent.  
3 Which means that 80 to 90 percent comes from other sources.  
4 Like soils and dusts and paints.

5 Dr. Specht tells you nothing about whether the lead  
6 he found came from water or whether it came from one of these  
7 other sources.

8 So there's no evidence of lead exposure. There's no  
9 evidence of elevated blood lead levels. The pXRF is not  
10 reliable. We're left with the evidence of impairment. And  
11 you heard a lot about this, this morning from Mr. Maimon and  
12 Mr. Stern.

13 And I would offer to you, members of the jury, this  
14 is a difficult part of your task to evaluate whether or not  
15 these children are impaired, because their parents say that  
16 they are. But you saw their academic records. You saw that  
17 apart from some bumpiness in the school years around COVID,  
18 these children are all doing well.

19 On top of that, I would suggest to you keep in mind,  
20 not one of these children, there's no evidence that any of  
21 them have sought or is seeking any medical treatment for lead  
22 poisoning. Not one of them is seeking any treatment for any  
23 of the conditions Dr. Krishnan diagnosed. They're not seeking  
24 educational plans. They're not seeking educational  
25 accommodations. There's no evidence of any of that.

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1           Now, what do we say about Dr. Krishnan's diagnoses?  
2       Well, number one, we want to remind you of Dr. Gaitanis,  
3       right? I'll remind you again, Dr. Gaitanis is a treating  
4       physician. He's not a professional expert. He's not someone  
5       who comes to court regularly and testifies in cases.

6           He's a pediatric neurologist who has devoted his life  
7       to helping children. And, yes, he's not an expert on lead  
8       poisoning, but he's an expert in the sort of conditions that  
9       Dr. Krishnan diagnosed. And what did he tell you? He told  
10      you that if these kids were referred to him, he would call  
11      their parents and say, "Good news. You can rest easy. The  
12      children are fine. They're not injured. And there's no  
13      treatment I can do to help them, because they're doing fine."

14           He also said on this notion that there's a downward  
15      spiral that, in fact, the opposite is true and that through  
16      treatment, some of these conditions can be improved.

17           He also told us that Dr. Krishnan, who, again, is not  
18      a medical doctor and who did her tests in a law office, that  
19      Dr. Krishnan misdiagnosed these children. That the cognitive  
20      functioning, the decrement in cognitive functioning that she  
21      diagnosed is something that has to be measured, according to  
22      the manuals, by something that goes beyond the normalcy in  
23      aging.

24           It's a diagnosis that's typically applied or really  
25      is applied in situations of Alzheimer's or dementia. It

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1 refers to an aging patient, and it's clearly inappropriately  
2 being applied to these kids, because they're at the wrong  
3 stage of life.

4 He also told you that the idea that these decrements  
5 came from an acquired brain injury is not correct. That those  
6 two diagnoses are mutually exclusive.

7 And here's -- and you heard from Dr. Thompson that  
8 the way this usually works in the real world is that the  
9 person who does the testing is not the same person who does  
10 the diagnoses, that the person does the testing and then sends  
11 them off to a doctor for diagnoses, a doctor like  
12 Dr. Gaitanis.

13 And he would -- and he concluded based on the records  
14 he saw, there was no need to evaluate these children in  
15 person. No need to subject them to that, because it was clear  
16 from the records he saw that they were not injured.

17 Again, you saw that Dr. Gaitanis made clear he didn't  
18 see any evidence of cognitive impairment in any of the  
19 children. And here's really the kicker when you think about  
20 this piece of evidence. Because, again, you have conflicting  
21 experts on both sides.

22 But ask yourself this question. Dr. Krishnan gave  
23 these diagnoses in 2020. That's two years ago, more or less.  
24 Is there any evidence that any of these children are seeking  
25 any kind of treatment, any educational accommodation, or



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1 anything as a result of that diagnosis? There isn't. There's  
2 no evidence.

3 We would submit to you, members of the jury, that  
4 these injuries only seem to exist in this courtroom. Their  
5 teachers haven't identified it. There's nothing in their  
6 academic record that suggests there's an impairment. And even  
7 though Dr. Krishnan testified to an impairment, there's no  
8 evidence that anyone's done anything about it.

9 Plaintiffs' counsel are not seeking damages for the  
10 cost of medical treatment. The most they can tell you is that  
11 they're suffering shame and embarrassment and humiliation. I  
12 think you heard the testimony was that I think it was Aundreya  
13 Teed suffered shame, because she came from Flint, and everyone  
14 associates Flint with the water crisis. Not because of  
15 anything that VNA did.

16 And they're saying that this is going to cause a  
17 reduction in earnings over the course of their lives. Members  
18 of the jury, there's just no evidence in the record to support  
19 any of that. There's no way to know what these children are  
20 going to do now and what they would have done before.

21 In fact, the testimony is that whatever these  
22 children were going to be before, they're still going to be  
23 able to be now.

24 Dr. Krishnan said it might be more difficult, but  
25 that's all she was able to say.

1           Finally -- and I know we're running late on time, and  
2           I appreciate you agreeing to stay with me through 2:30, and  
3           I'm confident I'll get this finished by then.

4           Finally, before you leave the subject of injury, you  
5           have to consider the concept of causation. Because, again,  
6           even if you find that these children are injured and even if  
7           you find that injury was caused by exposure to lead, you still  
8           have to -- you still have to conclude to side with the  
9           plaintiffs that this injury was caused by something done by  
10          VNA.

11          And to evaluate that, the question is: Well, what  
12          would have happened differently if VNA had made the  
13          recommendations that Mr. Humann suggest they should have made?  
14          What would have been different?

15          And I think you know the answer to that. Absolutely  
16          nothing. You know what the MDEQ's plan was. You heard it  
17          from Stephen Busch. They had this plan to do two six-month  
18          monitoring periods, followed by a period of time to do some  
19          testing, followed by some time to implement this. That was  
20          the plan that they were on.

21          And they're the MDEQ. They're the regulator.  
22          They're the boss. They're the law is what Mike Glasgow said  
23          about them. Do you really think if VNA showed up and said,  
24          "Ey, we think you should add orthophosphate right now," it  
25          would have -- something different would have happened?

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1           You can speculate about that. But there's no  
2 evidence to suggest that it would have. Because in addition  
3 to the fact that Stephen Busch told you this, you heard that  
4 there were lots of people who questioned it.

5           You heard about this June 26, 2013, meeting, a  
6 meeting, by the way, that Rowe Engineering attended, according  
7 to the documents. You heard that Warren Green raised  
8 questions about corrosion control.

9           And what was he told? He was told by Stephen Busch,  
10 "That's the way we do things in Michigan." Warren Green  
11 raised questions in 2013. "Do we think it would be different  
12 if in 2015 VNA had said something?"

13           You know nothing would have changed. Mike Glasgow,  
14 before they started distributing water from the plant, reached  
15 out to his bosses and then to the MDEQ, the regulator. This  
16 is the licensed operator at the plant. And he's saying, "The  
17 plant's not ready. If water is the distributed from this  
18 plant in the next couple of weeks, it would be against my  
19 direction."

20           Now, I know we've seen this a couple of times, and  
21 you can get kind of desensitized to it. But, members of the  
22 jury, this is the guy standing watch. This is the lookout on  
23 the Titanic yelling, "Hey, iceberg ahead."

24           And what do the people he's saying that to -- what  
25 did the captain say? They shrugged their shoulders. He heard

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1 Stephen Busch say that he never responded. Why? He didn't  
2 know. He just didn't respond.

3 You heard from Adam Rosenthal from the MDEQ testified  
4 by video deposition. He saw this email, too. He saw -- he  
5 testified he went and wanted to make sure Steve Busch had seen  
6 it. And then he was asked, "Well, did you say anything to  
7 Glasgow the next day when you were at the plant for the  
8 ceremony where they pushed the button?"

9 He said, "No. I didn't it was too loud in there. I  
10 couldn't say anything."

11 You really think when Mike Glasgow was telling the  
12 MDEQ, "Hold on. Don't distribute water." That if VNA had  
13 said something, something would have been different?

14 And I love this, when Dennis Muchmore testified just  
15 the other week he was shown some documents in which he and  
16 others were questioning Marc Edwards. And Mr. Campbell asked  
17 him, "Do you think they have a responsibility to look into  
18 this data rather than to simply call it irresponsible?"

19 And he gave his answer, and he explained that his  
20 attitude was, "No way, buddy. You just showed up in town."  
21 Talking about Marc Edwards who came from Virginia Tech.

22 We know what the attitude of the public officials  
23 was. They were committed to their plan. They had dug in  
24 their heels, and they weren't going to do anything different.  
25 "No way, buddy. You just showed up in town." The same would

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1 be true of VNA.

2 There were multiple opportunities, multiple  
3 opportunities after VNA left Flint when if anyone wanted to  
4 listen, if anyone wanted to do something differently, they had  
5 more than enough reason to do something differently. You have  
6 Glasgow's email, which I've talked about.

7 You had Pat Cook's email, April 24, 2015, when he  
8 finally told the EPA Flint doesn't have corrosion control,  
9 even though the MDEQ had previously lied about that.

10 You have Governor Snyder's meeting with the Flint  
11 pastors, July 22, 2015. And here's the one that is most  
12 compelling to me. This document's in evidence. August 17,  
13 2015. The MDEQ finally orders Flint to implement corrosion  
14 control but gave them until January 1, 2016, to do it.

15 You can check the document.

16 So ask yourselves, "This is the MDEQ, the regulator  
17 that has the power to put a stop to this right away, and  
18 they're saying, 'Add corrosion control, but you have six  
19 months or five months to do it.'" January 2016.

20 What's the date that if VNA had said, "Add  
21 orthophosphate in their report," what's the date that Flint  
22 officials would have stood up and said, "Okay. We're going to  
23 do it"? When all these other people had been saying, "Please  
24 do something about the water," and they weren't, what's the  
25 date that VNA's recommendation would have made a difference?

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1           And then think further. Even if it had happened  
2           right away, even if on February 11, 2015, they immediately  
3           decided to switch and add orthophosphate, how long does it  
4           take for lead to get out of the water? There's no evidence in  
5           the record about that.

6           Members of the jury, they are asking you entirely to  
7           speculate that if just VNA had said something, if VNA had  
8           said, "Add orthophosphate," everyone would have changed  
9           course, stopped everything they were doing, all the lies would  
10          have stopped, all the changing of data, they would have  
11          immediately snapped to, change the water treatment, and then  
12          the lead would have disappeared overnight.

13          There's just no evidence to support any of that.

14          Now, before I move on to the government officials,  
15          you've heard this is a case about four individual children,  
16          and you have to consider them individually. I want to just  
17          pause for a moment to review the evidence on each of them, and  
18          I promise I'll go through this relatively quickly.

19          First, we have Aundrea Teed. You met her parents or  
20          her mother. Aundrea was 5 years old at the time of the  
21          crisis. She had two -- on April 19, 2012, nearly two years to  
22          the day before the switch to the Flint River water, Aundrea's  
23          blood lead level was tested and reported to be 3, the highest  
24          of any level that she consumed.

25          She was tested again towards the end of the crisis,

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1 and her blood lead level was non-detect.

2           You heard from Aundreya's mom that Aundreya gets A,  
3 B, average grades. No one has ever recommended that Aundreya  
4 seek mental health treatment. Aundreya has never been  
5 punished in school. No time-outs, no detention, no  
6 suspension.

7           You heard from Dr. Krishnan. Aundreya has an overall  
8 normal intellectual level. She generally has the cognitive  
9 capacity to succeed. She has a low average score, not an  
10 impaired score. And you saw from Dr. Thompson, her IQ is  
11 right in the middle of the average range.

12           Emir Sherrod, similarly never had an elevated blood  
13 lead level. His teachers describe him as someone who's  
14 bright, conscientious, and demonstrates leadership. He has  
15 good team spirit but also the ability to work independently.  
16 He has a bright mind and a big heart.

17           Dr. Krishnan said Emir didn't have any significant  
18 discrepancies on the WISC-V and did acceptably on much of the  
19 remainder of the testing. His appropriate placement is in a  
20 mainstream classroom. There's no mention of ADHD or  
21 hyperactivity in his school records. And there's no diagnosis  
22 of ADHD in his medical records. His IQ score was right smack  
23 in the middle of the average range.

24           Riley Vanderhagen also never had an elevated blood  
25 lead level. She was tested, as I said before, towards the end

1 of the Flint Water Crisis, and her blood lead level was 0.7,  
2 within the national average. She was tested again shortly  
3 after, and it was slightly elevated, but still below CDC  
4 reference level.

5 According to Riley's family, she had tantrums that  
6 started around her first birthday. Never talked to the doctor  
7 about it, because it's a 1-year-old having a tantrum. They  
8 said she has the best personality, she's outgoing, and can  
9 make friends anywhere. She's a happy kid, like a comedian.

10 Dr. Krishnan noted she had difficulty reading in  
11 kindergarten, because she started kindergarten early when she  
12 was 4 years old, but by the end of the year, she caught up.  
13 And Riley's WRAT5 test results, she was reading well above  
14 grade level. Her IQ score was in normal range.

15 Then finally, you have Daylaana Ware whose highest  
16 blood lead readings in our whole case were years before the  
17 Flint Water Crisis. She was tested again later towards the  
18 end of the crisis or afterwards and did not have an elevated  
19 blood lead level.

20 Her teachers describe her as a very eager learner  
21 who's always respectful and kind. She does very well and gets  
22 As and Bs and is a joy to have in class. Dr. Krishnan said on  
23 a measure of overall functioning, she's in the normal range,  
24 and her IQ score was within the normal range.

25 Members of the jury, again, we don't want to seem



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1 callous towards these children. Everyone cares about  
2 children. As Mr. Stern said, that's what unites all of us.  
3 But the question before you is not whether you care about  
4 children. We all care about children. The question is: Are  
5 these children injured? Was their injury caused by exposure  
6 to lead in Flint's water? And did anything VNA did cause that  
7 injury?

8 And the answers to all of those questions, with all  
9 respect to these children, the answer is just, no, they were  
10 not injured.

11 Now, finally let me talk about this last subject, the  
12 government officials being responsible. I said at the  
13 beginning that we're not here to shift blame. This is what  
14 the law requires. It's what the judge has instructed you the  
15 law requires.

16 And, again, it's your duty to go through this. And  
17 if you find that there's negligence and if you find that  
18 there's injury to then allocate fault amongst whatever parties  
19 you think are responsible.

20 Now, I thought it was interesting that Mr. Maimon,  
21 when he was trying to undercut our case against these  
22 government officials, he said, "Well, look. They didn't have  
23 an expert that testified that these government officials were  
24 responsible. They didn't -- we brought experts to satisfy our  
25 claims. They didn't bring any experts to satisfy theirs."

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1           He may have forgotten that Mr. Humann testified that  
2       -- he agreed with the generally accepted conclusion that the  
3       Flint Water Crisis was a failure at all levels of government.  
4       Mr. Humann, their expert, testified to that.

5           Mr. Humann also testified that if the MDEQ had told  
6       the city that it needed to add a corrosion inhibitor, the  
7       Flint Water Crisis may never have happened. That's their  
8       expert. He agreed to that.

9           Ask yourselves, "If that's true, that if the MDEQ had  
10      told the city it needed to add a corrosion inhibitor, how on  
11      earth is VNA 50 percent responsible for this crisis?" If  
12      that's the argument they're trying to make to you.

13          He told you that -- or he agreed that ultimately the  
14      City of Flint is responsible for the water crisis, and  
15      Mr. Humann said the decisionmaking would have been with the  
16      City of Flint. Yes.

17          And finally, he wrote in his report, "The Flint Water  
18      Crisis occurred when state appointed emergency managers  
19      replaced local representative decisionmaking."

20          And he said, "Yes."

21          So who bears responsibility for the Flint Water  
22      Crisis?

23          We're learning it's 2:10.

24          I only -- I promise you I'll be done in 20 minutes,  
25      and I'm not going to go through all of the evidence we've

1 heard. There had be no way to possibly do that on this point.

2 You've heard mountains of evidence about the Flint  
3 Water Crisis.

4 What I propose to do to wrap up this part of the  
5 closing argument is go through the key decisions that were  
6 made and which parties are responsible for those decisions.  
7 As a way, again, to help you when you're allocating  
8 responsibility, figure out where responsibility lies.

9 Let's begin with the decision -- sorry -- the  
10 decision to use the Flint River.

11 Who made that decision? Well, it's a decision that  
12 is hard to understand other than by the fact that everyone  
13 involved in governing Flint was trying to save money. The  
14 city had been authorized to use the Flint River as a backup  
15 source, but it had no experience treating raw river water as a  
16 full-time source and didn't have anywhere near the necessary  
17 staff. The plant was in disrepair. And everybody knew it.

18 But it was cheap. It was going to save them  
19 12 million a year, so that's what they decided to do. And,  
20 you know, you hear from Mr. Stern, "Well, these people didn't  
21 know anything. Howard Croft didn't know anything about --  
22 about water. How could he be held responsible?"

23 Members of the jury, Howard Croft was the director of  
24 public works for the City of Flint. It was his job to know  
25 something about water. He can't make the excuse of, "Well, I

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1 hired Veolia for a week, so I guess my job's done."

2 It was his job to know something about water. And  
3 you saw by their own admission, he didn't know anything about  
4 water.

5 You heard that Mayor Walling and the emergency  
6 managers try to blame the decision to switch to the Flint  
7 River on Detroit, saying that, you know, Detroit cut us off.  
8 But you know better. You saw from Sue McCormick that she  
9 offered to reconnect them without any long-term contract or  
10 increased fee.

11 So why did they stick to this plan to go to the  
12 river? I think you've seen enough evidence. It's a  
13 combination of arrogance, shortsightedness, and recklessness.  
14 Everyone knew the Flint River -- the Flint Water Treatment  
15 Plant had been mothballed and only used in a backup capacity.

16 Everyone knew it would require substantial upgrades  
17 to be ready to start treating Lake Huron water from the KWA  
18 and that the only way to do this would be to stop buying water  
19 from Detroit.

20 And you heard that there were lots of people who were  
21 raising red flags about this before the decision was made.  
22 Adam Rosenthal, from the MDEQ. When he heard they were going  
23 to the river, he said, "I didn't agree with it. I thought it  
24 was a mistake." He thought going to the river and having them  
25 fire up, basically a mothballed plant was a mistake.

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1           Again, I went over this before. You saw  
2           Mr. Glasgow's email. If you do this, it will be over my  
3           objection. And you saw that as I said before, Mr. Busch  
4           didn't do anything when he saw that testimony. Mr. Rosenthal  
5           didn't raise it, because it was loud in there.

6           So who made the decision to switch to the Flint  
7           River? Who's responsible for that? Governor Snyder, who  
8           appointed the emergency managers and who the emergency  
9           managers reported to, who failed to broker a deal between  
10          Detroit and Flint to solve this problem.

11          The emergency managers, who pushed forward with the  
12          plan, because they wanted to save \$12 million a year. And the  
13          City of Flint, which plowed ahead, even though it knew the  
14          plant wasn't ready. State of Michigan, through its MDEQ,  
15          which approved this plan, even though their internal people  
16          knew it was a mistake, the State of Michigan bears  
17          responsibility, as well.

18          What's the next decision we want to talk about? The  
19          lack of corrosion control. Again, there's really no mystery  
20          at this point on this -- on what happened here. The MDEQ  
21          decided from its mistaken interpretation of the Lead and  
22          Copper Rule that Flint didn't need corrosion control, because  
23          they were going to do two six-month monitoring periods  
24          followed by some time to test it. That was their decision,  
25          the MDEQ.

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1           And you heard that there were people like Warren  
2       Green who raised questions about this. And what happened?  
3       You heard in response from several witnesses, from the  
4       emergency manager's mandate was we're not doing anything that  
5       the MDEQ doesn't require. No extras. That's what Emergency  
6       Manager Kurtz said. No extras. If the MDEQ requires it,  
7       we're going to do it. If they don't require it, we're not.  
8       And they weren't requiring corrosion control.

9           And you know now this was a mistake. The MDEQ  
10      director admitted it was a mistake that corrosion control  
11      should have been required from the beginning. Who made this  
12      decision? Clearly the State of Michigan through its MDEQ.

13           You didn't hear very much about the MDEQ when  
14      Mr. Maimon was going through the responsible parties. It was  
15      all VNA 50 percent and LAN 25. The MDEQ, which made the  
16      decision not to require corrosion control sort of slipped his  
17      mind.

18           The emergency managers, who went along with that  
19      decision and the City of Flint. And Governor Snyder, who  
20      ultimately controlled the emergency managers and the MDEQ.

21           What happened after this decision was made to  
22      distribute water without corrosion control? Well, immediately  
23      there were water treatment failures. Immediately.

24           Very soon after the switch, you heard within 30 days,  
25      Rob Bincsik told you there was a massive uptick in citizen

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1 complaints about water quality. The water smelled bad. It  
2 looked bad. It tasted bad. You heard from Rob Bincsik that  
3 around this time when he started raising questions about what  
4 the city was doing, he found -- he attended one meeting where  
5 he asked some questions, and he found that all that happened  
6 was he never got invited to another meeting.

7 The City of Flint and the emergency managers were  
8 committed to this course of action.

9 Turns out, truly, water wasn't as simple as they had  
10 thought.

11 Here you see the statements I referred to from Howard  
12 Croft. "Pretty much right away we got complaints. 30 days  
13 after the switch we got complaints."

14 Again, VNA wasn't even there. Who's responsible for  
15 the water treatment failures? The City of Flint, the  
16 emergency managers, the State of Michigan, and  
17 Governor Snyder.

18 What was the next key decision? Well, they had an  
19 opportunity to reconnect to Detroit in January of 2015. That  
20 was what Sue McCormick testified about.

21 Sorry. I skipped one.

22 Well, let me go through. It's not on my chart.

23 October 2014, Governor Snyder's advisor, Valerie  
24 Brader, reached out to the City of Flint emergency manager and  
25 said, "We should ask the EM to consider coming back to the

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1 Detroit system. This is an urgent matter to fix." No action  
2 taken by the governor. Even after Governor Snyder sent his  
3 letter seeking help, no action taken by the governor.

4 Finally, let me talk about LeeAnne Walters and these  
5 lead test results. You heard a lot about this. Mr. Stern  
6 faulted us for trying to use a Flint mom as part of our  
7 defense. I think we're just talking about the evidence of  
8 what happened in Flint.

9 And the evidence is clear that everybody, everybody  
10 involved, when they got these results, understood that there  
11 was a serious issue. You heard from Mayor Walling when they  
12 got these lead test results, they knew there were very serious  
13 issues that were coming up.

14 You heard from Mike Glasgow that this is what caused  
15 him to connect the dots that there was a lead problem in the  
16 City of Flint. This is when things added up in his mind.

17 You heard from Rob Bincsik that as soon as he saw  
18 these lead test results, he was concerned about a potential  
19 larger problem in the system. You heard from Adam Rosenthal  
20 from MDEQ, that as soon as he saw this level 104, he said,  
21 "Wow. That's high."

22 But even though all of these city officials -- you  
23 heard from Stephen Busch. He was alarmed, because it was a  
24 high lead result. All these city officials, they saw this  
25 result, they knew it was high. They knew it was a big



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1 problem. None of them, not one of them shared that  
2 information with VNA.

3 The consultants that were supposedly there to help  
4 solve all of these problems and who bear all responsibility  
5 for everything that occurred.

6 And you heard from Marvin Gnagy that if he had been  
7 told about this, he would have focused on lead and seen it as  
8 a more current issue.

9 You heard that the EPA had the opportunity at that  
10 point after these test results were found to step in and take  
11 action, and they didn't do it.

12 They were delayed in doing that. Why were they  
13 delayed? Because the MDEQ directly lied to them. You saw  
14 this testimony during the trial. You saw that after the  
15 discovery was made about the high lead results, Jennifer  
16 Crooks asked Stephen Busch, "Miguel was wondering if Flint is  
17 feeding phosphates. Flint must have optimal corrosion control  
18 treatment? Is it phosphates?"

19 What did he answer? He says, "The City of Flint has  
20 an optimized corrosion control program." And he admitted when  
21 he was here on the stand that he knew those were not the same  
22 things. He knew they were asking about phosphates, and he was  
23 talking about his two six-month monitoring periods.

24 And even when the EPA tried to -- when Miguel Del  
25 Toral of the EPA tried to ask questions, did they take his

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1 advice? Did they get help from him? No. They tried to reach  
2 out to their director to call the EPA and tried to have Miguel  
3 Del Toral overreach his address.

4 Think about the testimony from someone like  
5 Mayor Walling, who told you that after the crisis ended, he  
6 went through Veolia's report, and he just was so disturbed to  
7 see that it didn't mention the word "lead."

8 But then had to admit on cross that he got Miguel Del  
9 Toral's report from June of that year, which mentions the word  
10 "lead" 20 times, and still did nothing.

11 So who's responsible for ignoring the Walters's test  
12 results? Clearly the City of Flint, the emergency managers,  
13 State of Michigan, EPA, Governor Snyder. Not VNA. They  
14 weren't even there.

15 Last two things. Falsifying the LCR results. You  
16 heard this from Mike Glasgow. He submitted this was when --  
17 towards the middle of 2015, he submits the LCR results to the  
18 state, to the MDEQ. They're above the action level. What  
19 does the state tell him to do? Take the Walters's home off of  
20 your results. And so he changed the report, submitted a new  
21 report, and added a footnote that said he changed it at the  
22 request of the MDEQ.

23 State of Michigan, through its MDEQ, the governor who  
24 appointed them, City of Flint, Mike Glasgow for going along  
25 with it.

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1           And finally, you heard about the Flint pastors July  
2   of 2015. They came to Governor Snyder. They asked for his  
3   help. They presented him with evidence of elevated lead in  
4   Flint's water. You saw Mr. Muchmore's notes from that  
5   meeting. "Lead is a big problem." July of 2015. Veolia  
6   efforts. "What are we doing with these?" Still no one did  
7   anything.

8           Mr. Stern wants to talk about his puzzle from his  
9   opening statement. And Mr. Maimon suggests that VNA is  
10  50 percent responsible for what happened in Flint. Members of  
11  the jury, when you put together all of the evidence, they are  
12  pieces of a puzzle.

13          But they're pieces of a puzzle that VNA just doesn't  
14  fit into. You have Governor Snyder, who controlled  
15  everything. You have the DEQ, which made the critical  
16  decisions to approve the use of the Flint Water Treatment  
17  Plant and then did not require corrosion control and then lied  
18  and covered up its mistakes when it was called out.

19          You had the EPA, which had clear evidence of a  
20  violation and did nothing about it. You had the MDHHS, which  
21  you heard about, has the ability to test for blood lead  
22  levels. You didn't hear much more, because Nancy Peeler from  
23  the MDHHS took the Fifth when we called her to testify.

24          You have the emergency managers who controlled  
25  everything. Plaintiffs' counsel are desperately trying to get

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1 that VNA puzzle piece to fit into this puzzle, but it just  
2 doesn't belong.

3 Members of the jury, as I told you in my opening  
4 statement, the people of VNA did not cause the Flint Water  
5 Crisis. The people of VNA did not prolong the Flint Water  
6 Crisis. And the people of VNA didn't make the water crisis  
7 worse in any way.

8 VNA did good work in Flint. In the space of one  
9 week, it performed a comprehensive analysis of Flint's water  
10 and made a series of really good recommendations that had they  
11 been followed, would have helped.

12 At the same time, while the people of Flint deserve  
13 better in terms of their water, there's just no evidence that  
14 any of these children were injured as a result of anything  
15 that VNA did. The Flint Water Crisis was a massive failure of  
16 government at all levels.

17 Now, in a moment, on schedule, I'm going to sit down,  
18 and you'll be able to leave for the day. We'll be back  
19 tomorrow, and you'll hear from Mr. Mason and then briefly from  
20 Mr. Stern. We're not going to have another opportunity to  
21 speak to you. And you may be glad about that. I've been  
22 going on for a long time now.

23 But I ask you this: We've been here for five  
24 months, more. You've heard the questions we've asked of our  
25 witnesses. You've heard the questions we've asked of their

1 witnesses. You've listened very carefully to my argument  
2 today. When Mr. Stern is speaking tomorrow, remember I'm not  
3 going to have a chance to respond.

4 But I think if you pay attention to the arguments I  
5 made today to the way that the evidence just doesn't support  
6 the way they have to prove, you're going to be able to know  
7 what I'm going to say without me having to say it. And I ask  
8 you to think about that when he addresses you tomorrow.

9 Again, members of the jury, you have been a  
10 remarkable jury, and we thank you again deeply for your  
11 service. Thank you.

12 THE COURT: Okay. Thank you, Mr. Stein.

13 So, members of the jury, it's time for us to wrap up  
14 for today. We'll start again at 8:30 tomorrow. I ask you to  
15 especially remember not to talk about the case among  
16 yourselves until you've got the jury instructions, the verdict  
17 form, and you're ready to deliberate. So please rise for the  
18 jury.

19 (Jury Out)

20 THE COURT: Please be seated. Leslie has sent the  
21 verdict form by email.

22 MR. MAIMON: I'm sorry. I didn't --

23 THE COURT: Leslie sent the verdict form -- no, I was  
24 fading out -- by email to counsel. Do you want to have until  
25 5:00 o'clock, 6:00 o'clock, something to let me know if you

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1 have any objections to the verdict form?

2 MR. MAIMON: Sure.

3 THE COURT: Okay. Will that work, Mr. Stein?

4 MR. STEIN: Yes.

5 THE COURT: Mason?

6 MR. MASON: Yes, Your Honor.

7 THE COURT: Kent? Okay.

8 And for anyone who's in the courtroom coughing, I  
9 just ask that you try to test before you return in the morning  
10 if you plan to return. Just because we're in pretty tight  
11 quarters today. So I just -- it's a favor to the court and  
12 the jury that I would appreciate if you did.

13 So is there anything else at this time?

14 MR. MAIMON: Not right now.

15 THE COURT: Okay. Good.

16 (Proceedings Concluded)

17 - - -

18

19 CERTIFICATE OF OFFICIAL COURT REPORTER

20 I, Jeseca C. Eddington, Federal Official Court  
21 Reporter, do hereby certify the foregoing 206 pages are a true  
22 and correct transcript of the above entitled proceedings.

23 /s/ JESECA C. EDDINGTON  
24 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

07/20/2022  
Date

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